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Letter dated 9 September 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 22 July 2002 (S/2002/819).

The Counter-Terrorism Committee has received the attached supplementary report from Argentina submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 30 August 2002 from the Permanent Representative of Argentina to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I have the honour to transmit herewith the report supplementary to the report submitted to the Committee on 27 December 2001 (S/2001/1340), in order to provide additional information (see annex) on the measures taken by the Argentine Republic pursuant to Security Council resolution 1373 (2001), as requested by the Committee in its letter dated 22 July 2002 (S/2002/819).

I should be grateful if you could arrange for this letter and the enclosed report to be circulated as a document of the Security Council.

(*Signed*) Arnoldo M. **Listre**
Ambassador
Permanent Representative

Enclosure

Supplementary report of the Argentine Republic on the implementation of Security Council resolution 1373 (2001)*

Subparagraph 1 (a)

(a) Decides that all States shall prevent and suppress the financing of terrorist acts;

Could Argentina please indicate how it proposes to implement the United Nations Convention for the Suppression of the Financing of Terrorism?

On 30 April 2002, the Executive sent the bill endorsing the Convention to Congress. The bill has been approved by the Senate and is currently being considered by the Chamber of Deputies. Once Congress finalizes its procedures, the Executive will ratify the Treaty.

As indicated in the report of the Argentine Republic on how the provisions of subparagraph 1 (b) of Security Council resolution 1373 (2001) are being implemented, the then Ministry of Justice and Human Rights has set up, through resolution 189/2002 dated 4 April 2002, an inter-ministerial committee composed of distinguished experts for the purpose of analysing and assessing the extent to which Argentine criminal law is in line with international conventions concerning terrorism and preparing such draft legislation as may be necessary. Although the Convention is not in force for Argentina, the committee may recommend the provisions required to characterize terrorist financing as an offence under domestic law and take other measures to implement the Convention as well as the provisions of resolution 1373 (2001).

Please provide the Committee with the outcome of the inter-ministerial committee's evaluation of the Argentine criminal law with reference to the requirements of the international conventions and protocols on terrorism.

The above-mentioned committee, which began its work on 29 April 2002, has 180 days within which to prepare its proposals. It has concluded on a preliminary basis that a large majority of the acts described by the international conventions on terrorism, to which Argentina is a party, have been characterized as offences. The committee is currently considering enacting specific additional legislation relating to terrorism and incriminating conduct related to the financing of terrorism.

Please explain how effect is given in the provinces to the federal laws relating to terrorism.

As explained in the report on the implementation of subparagraph 1 (b) of resolution 1373 (2001) (S/2001/1340), Argentine law does not characterize terrorism or terrorist acts as a separate offence and says nothing about terrorism being a component of any criminal offence or an aggravating circumstance. Under the Constitution, ordinary criminal or federal courts shall be responsible for the investigation, suppression and punishment of offences involving acts of terrorism as provided for under our federal republican system of representative government

* The annexes are on file with the Secretariat and are available for consultation.

where local (provinces and the autonomous city of Buenos Aires) and federal jurisdictions exist side by side.

Under the Argentine constitutional system, local governments retain all the powers not delegated to the Federal Government (article 121 of the Constitution) including, inter alia, the power to organize their own system of justice and to enact codes of procedure (article 5 of the Constitution), including codes of criminal procedure.

The Federal Government may, among other things, enact substantive codes such as the Penal Code in force throughout Argentina, whose application by the federal or provincial courts will depend on whether the matters or persons concerned fall within their respective jurisdictions (article 75, paragraph 12, of the Constitution).

The Constitution sets out the structure and competence of the federal system of justice, assigning to the Supreme Court and to the lower courts (federal courts) the power to hear and rule on all cases having to do with matters governed by the Constitution and by national laws, except for the application of the laws referred to in article 75, paragraph 12 (as explained in the above paragraph); and by treaties with foreign States, cases concerning ambassadors, ministers of the Government and foreign consular officials, cases involving the admiralty and maritime jurisdiction, matters to which the nation is a party, cases involving disputes arising between two or more provinces, between one province and the inhabitants of the other, between the inhabitants of different provinces, between a province or its inhabitants against a State or foreign national (article 116 of the Constitution). In particular, the Supreme Court shall have primary and exclusive jurisdiction over all cases involving ambassadors, ministers and foreign consular officials and to which provinces may be party (article 117 of the Constitution).

There is also a legislative practice according to which the very criminals themselves expressly provide for federal jurisdiction to apply. Examples of such legislation are Act No. 13,985 (crime against State security), Act No. 20,840 (national security) or Act No. 23,767 (narcotics).

In short, while under Argentine law any crime involving acts of terrorism necessarily violates national criminal law, its prosecution falls within the competence of the federal justice system or local justice system, in accordance with the above-mentioned constitutional provisions.

In order to regulate some matters which fall under both federal and provincial jurisdiction, Argentine constitutional practice developed a mechanism known as a framework-law. It is a national law enacted by Congress but which is applicable only in those provinces that expressly decide to accede to it. Act No. 24,059 on domestic security is an example of that law.

Please also explain how coordination is achieved between the federal agencies dealing with anti-terrorism and the agencies of the provinces on the one hand and amongst the agencies o f the provinces on the other.

From an operational standpoint, there is no specific legislation that deals with the phenomenon of terrorism in terms of State security policy or police activities. Coordination between federal and provincial agencies and the latter among

themselves is achieved through the State's overall security policy, which includes terrorism as provided for in the relevant legislation in force.

Domestic Security Act No. 24,059 defines domestic security as "... the protection of the freedom, lives, property, rights and guarantees of the people, and the safeguarding of the institutions of the representative, republican and federal system enshrined in the Constitution (article 2).

Also, under the Act, the Domestic Security Council may advise the Minister of Justice, Security and Human Rights, who is responsible for the domestic system of security, in the formulation of policies relating to the prevention and scientific investigation of the types of crime that have the most serious quantitative or qualitative impact on the community ... (article 10 (b)).

These two legal notions clearly empower the competent authorities to provide for and implement counter-terrorist measures and actions on the territory and in the territorial waters and air space of the Argentine Republic. Thus federal and provincial agencies responsible for internal security coordinate their activities within the framework of this domestic system of security provided for by that Act, which has been in force since January 1992.

In accordance with article 3 of the Domestic Security Act, it is the national police and security forces that are responsible for the protection function referred to in article 2. While that function is in principle restricted to federal jurisdiction it may, at the request of relevant authorities, be extended to the provinces as provided for by that Act.

The status of a framework law for that norm is the element that determines the special features of the Argentine federal system and allows for planning and coordinated action, where necessary, between national and provincial governments. It is consistent with the provisions of article 5 of the above-mentioned law that: "Domestic security, pursuant to the principles derived from the Constitution, is governed by current national and provincial laws on security and by the present law, which shall have the nature of a framework law with respect to coordinating action with those provinces that accede to such law". All the provinces and the autonomous city of Buenos Aires have become parties to Act No. 24,059.

Accordingly, as far as the prevention and repression of crime is concerned, there are, on the one hand, State agencies that are fully or partly responsible for counter-terrorism (including the national police and intelligence agencies) and the provincial police forces on the other hand.

Security operations under the system are conducted by the planning and monitoring centre whose mission, according to article 15 of the above-mentioned Act, shall be to "assist and advice the Ministry of the Interior (now the Ministry of Justice, Security and Human Rights) and the Crisis Committee in the management of the police and security forces for the purposes provided for by the present Act. It will be made up of senior officers from the Argentine Federal Police, the Gendarmería Nacional, the Argentine Coast Guard and provincial police and such civil servants as may be required.

As far as national intelligence is concerned, mention must be made of National Intelligence Act No. 25,520 enacted in late 2001, which provides for the National Intelligence System. Under article 13, paragraph 7 of that Act, the Intelligence

Secretariat may "request such cooperation as it deems necessary from the provincial governments in carrying out its activities".

Concurrently, pursuant to the provisions of article 8 of the regulations of the National Intelligence Act approved by Decree No. 950 of 5 June 2002, annex 1, "under the cooperation provided for by article 13, paragraph 7 of the Act, provincial governments shall make available to the Intelligence Secretariat any information they obtain that may lead to the discovery of any threats and conflicts likely to affect national security. Provincial information and intelligence agencies shall, through the National Criminal Intelligence Directorate of the Domestic Security Secretariat (read Ministry of Justice, Security and Human Rights) and pursuant to the provisions of article 16 of the Act No. 24,059, also make available to the Intelligence Secretariat any information they obtain that may lead to the discovery of threats and conflicts likely to affect the internal security of the State".

The foregoing statements in reference to national intelligence show how the national Government's greatest strengths in intelligence gathering lie with the provinces, particularly with reference to counter-terrorism efforts. The Domestic Security System and the National Intelligence System are the legal bodies responsible for carrying out the necessary coordination with respect to counter-terrorism activities at the national and provincial levels and at the level of the autonomous city of Buenos Aires.

Subparagraph 1 (b)

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

Please indicate whether natural and legal persons outside the main financial sector (example lawyers) are legally required to report suspicious transactions to the relevant public authorities . If so, what are the penalties for non-compliance?

Article 20 of Act No. 25,246 on concealment and laundering of the proceeds of criminal acts establishes that the natural and legal persons outside the financial system who are required to report to the Financial Intelligence Unit under article 21 of the Act are the following:

- Natural and legal persons who normally operate games of chance for a living;
- Natural and legal persons who buy and sell works of art, antiques or other luxury goods, deal in stamps or coins or are involved in the export, import, manufacture or industrialization of jewels or goods containing metals or precious stones;
- Notaries public;
- The entities listed in article 90 of Act No. 22,315 (companies involved in capitalization and savings operations);
- Natural and legal persons listed in the registers established by article 23, subparagraph (t) of the Customs Code (Act No. 22,145 and amendments thereto), namely, customs agents, customs forwarding agents, importers and exporters;

- Registered professionals, whose activities are regulated by professional economic boards, except when acting for the defence in a trial;
- All legal persons who receive donations or third-party contributions;
- Firms that transport funds.

In order to clarify this answer, the following natural and/or legal persons listed in article 20 of the Act shall be deemed to belong to the financial system in the widest sense:

- Financial entities subject to the provisions of Act No. 21,526 and amendments thereto and entities administrating retirement and pension funds;
- Entities subject to the provisions of Act No. 18,924 and amendments thereto and the natural and legal persons authorized by the central bank to purchase and sell foreign currency in the form of cash or cheques or through the use of credit or proprietary cards or to transfer funds within the country or abroad;
- Stock brokers or stockbroker companies, mutual fund investment management companies, open electronic market dealers and all those middlemen involved in the purchasing, leasing or lending of securities who operate under commodity exchanges with or without member markets;
- Agents registered with any futures and options exchanges;
- Travellers' cheque or credit or proprietary card issuers;
- Insurance companies;
- Insurance producers, assessors, intermediaries, and claims adjustors whose activities are governed by Act No. 20,091 and Act No. 22,400 amendments thereto, supporting and supplementary legislation.

The above-mentioned Act also covers :

- Public service agencies and decentralized and/or autonomous entities that exercise regulatory, monitoring, supervisory and/or oversight functions over economic activities and/or legal transactions and/or subjects of law, whether individual or collective: the Central Bank of Argentina, the Federal Administration of Public Income, the National Superintendency of Insurance, the National Securities Commission and the General Inspectorate of Justice;
- Trade registers, agencies responsible for the oversight and control of legal persons, immovable property registers , automobile registers and registers on liens.

Under article 20 *in fine*, persons who are required to report by law may not invoke the provisions relating to banking, tax or professional secrecy nor the confidentiality provisions established by law or by contract. On the other hand, by virtue of the right of defence enshrined in article 18 of the Constitution, defence lawyers are in principle excluded from the obligation under article 20.

The penalty for non-compliance is set out in article 24 of Act No. 25,246 which establishes :

> "1. That any person acting as an agent or implementer of a legal or physical person who fails to comply with any of the obligations to inform the

Financial Intelligence Unit established by this Act shall be punished by a fine of one to ten times the total value of the assets or transaction which are the object of the offence, provided that the act does not constitute a more serious offence.

2. A similar punishment shall be imposed on the legal person for whom the offender works.

3. A fine of 10,000 to 100,000 pesos shall be imposed where the actual value of the assets cannot be established."

It should also be noted, that pursuant to the organic law of the General Inspectorate of Justice — the body that exercises oversight over companies, civil associations and foundations — the inspectorate may request from those under its jurisdiction such information and documents as it deems necessary (article 6, paragraph A of Act No. 22,315).

Please provide a list of the predicate offences covered by Act No. 25,246.

Article 6 of Act No. 25,246 gives the Financial Intelligence Unit jurisdiction over the laundering of assets derived from criminal acts and lists the offences included in such jurisdiction:

"Article 6 — The Financial Intelligence Unit shall be responsible for the analysing, processing and transmitting of information for the purpose of preventing the laundering of assets derived from:

(a) Offences related to drug trafficking and sales (Act No. 23,737);

(b) Arms trafficking (Act No. 22,415);

(c) Offence of aggravated unlawful association in the terms of article 210 bis of the Penal Code;

(d) Unlawful acts committed by unlawful associations (article 210 of the Penal Code) established for the purpose of committing political or racial offences;

(e) Fraud against the Government (article 174, paragraph 5, of the Penal Code);

(f) Offences against the Government provided for under chapters VI, VII, IX and IX bis of Title XI of book two of the Penal Code;

(g) Offences of prostitution of minors and child pornography, provided for by articles 125, 125 bis, 127 bis and 128 of the Penal Code."

It should be noted that, under article 278 of the Penal Code, the offence of money-laundering is defined as any use of assets derived from an offence of a total value exceeding 50,000 pesos, either by a single act or by the repetition of various interrelated acts.

A detailed list of the offences covered by article 6 of Act No. 25,246 is annexed to this report.

Subparagraph 1 (c)

"(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acing on behalf of, or at the direction of, such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;"

Executive Decree 12315/01 of 5 October 2001 calls upon the provinces, other units and federal government departments to take action to implement the resolution. Please describe the measures taken by the various units mentioned in the decree.

In view of the urgent need to take further measures and aware of how far along in the process of adopting United Nations resolution 1373 (2001) the Argentine Republic was the National Coordination Directorate and Analysis for Crime Prevention of the Domestic Security Secretariat convened a special meeting of the chiefs of intelligence of the provincial police, the federal police forces (Argentine Federal Police, National Police Force and Argentine Coast Guard), the National Aeronautical Police and representatives of the Intelligence Directorate at the Domestic Security Secretariat, Buenos Aires, on 3 October 2001.

At that meeting, progress was made in coordinating intelligence within the framework of the provisions of Act No. 24,059, particularly as regards streamlining the exchange of information; jurisdictions were instructed to update both national and provincial objectives concerning protection against terrorist acts; and the conclusions reached by the Sixth Intelligence Commission, especially convoked within the framework of the Meeting of the Regional Council on Domestic Security in north-eastern Argentina, held in Puerto Iguazú, Province of Misiones, on 27 September 2001, with the participation of those departments responsible for the security of what is known as the "tri-border" area — were disseminated and jointly analysed.

Thus far, the National Coordination and Analysis Directorate for Crime Prevention, under Decree No. 1045/2001, has been responsible for ensuring compliance with the provisions of article 16 of Domestic Security Act No. 24,059 which refers to establishing "... the organ through which the Ministry of the Interior (now the Ministry of Justice, Security and Human Rights) shall direct and coordinate activities of the information and intelligence organs of the Argentine Federal Police, those of the National Police Force and the Argentine Coast Guard solely for the purposes of domestic security, and those at the provincial level under any agreements concluded ...".

The National Criminal Intelligence Directorate was created with the adoption of Act No. 25,520 on National Intelligence. It will become official once the structure of the new Ministry of Justice, Security and Human Rights of the Nation is established by decree and begins to carry out the functions set out in article 16 of Act No. 24,059.

Mention should also be made of progress in the implementation of the National Argentine Node (NONARG), which is directly accountable to the Planning and Control Centre of the Domestic Security Secretariat. In its initial phase, the function

of NONARG is to operate an informatics system for the exchange of security information among the security forces — National Police and Argentine Coast Guard — the Federal Police and the National Directorate of Immigration. In the next phase, to follow immediately, the provincial police forces and other national, provincial and/or municipal departments that can provide information of interest to the Node will be included. The Node also contains registers (of, inter alia, weapons, persons and vehicles). NONARG plays a key role in the Security Information Exchange System (SISME) for the Common Market of the Southern Cone (MERCOSUR), Bolivia and Chile as its administrative organ. In this capacity, it exchanges information with all members of MERCOSUR, directs requests to the databases of agencies with information and returns that information to the requesting country. The Domestic Security Secretariat is responsible for the administrative, functional, operational and legal aspects of all information transmitted through the Node to SISME member countries.

Please outline the legal provisions available to freeze funds, financial assets and other economic assets of persons and entities found to be supporting terrorism inside or outside Argentina and indicate whether they are binding on all the units of the federation.

As indicated in the "Report of the Argentine Republic on the implementation of United Nations Security Council resolution 1390 (2002)", United Nations Security Council resolutions imposing sanctions are implemented in the domestic legal order of the Argentine Republic through executive decrees. In the Argentine legal order, international treaties take precedence over national legislation (National Constitution, article 75, paragraph 22). Security Council resolutions adopted under Chapter VII of the Charter of the United Nations, as norms derived from an international document, are also given priority over national law. In any case, a presidential decree is necessary in order to publicize a resolution for purposes of its implementation by the competent federal departments, and to make it binding on the citizens under Argentine jurisdiction. The decree is part of federal law and, hence, is binding on all units of the federal State (National Constitution, article 31).

With regard to the above-mentioned resolution 1390 (2002), Decree No. 623/2002 on the freezing of funds and financial assets, in its article 3, provides that updating the list of persons and entities referred to in paragraph 2 of the said resolution shall be done by resolution of the Ministry of Foreign Affairs, International Trade and Worship. Ministerial Resolution No. 623/2002 of 18 April 2002 was adopted in accordance with that Decree, as already indicated at the time to the Committee established pursuant to resolution 1267 (1999). After that report was submitted, the Ministry of Foreign Affairs, International Trade and Worship adopted resolution 839/002 of 23 May 2002, which contains an additional list of entities and persons identified in accordance with resolution 1267 (1999), in implementation of resolution 1390 (2002). A copy of this ministerial resolution is attached to the report.

As indicated at the time (S/2001/1340, p.7), following the adoption of the decrees implementing Security Council decisions calling for the freezing of funds and financial assets and the corresponding ministerial resolutions publicizing the lists of persons and entities subject to the freeze, the Central Bank of the Argentine Republic issued Communication "B" 6986 of 26/9/01, Communication "B" 7017 of 18/10/01 and Communication "B" 7023 of 25/10/01. This was followed by

Communication "B" 7035 of 5/11/01, Communication "B" 7085 of 7/1/02, Communication "B" 7114 of 1/02/02, Communication "B" 7163 of 15/3/02 and Communication "B" 7176 of 25/3/02, of which copies are attached, respectively.

Under the applicable legal norms — Act No. 21,526 on financial entities and the Charter of the Central Bank of the Argentine Republic — Central Bank provisions are binding on private, public, semi-public or official national, provincial or municipal persons or entities ordinarily engaged in intermediation between the supply and demand of financial resources. Compliance with these norms is monitored through on-site inspections carried out by the Oversight Department of the Central Bank.

In addition, as already indicated, the National Securities Commission adopted General Resolutions CNV No. 375/01 and 377/01. It subsequently adopted General Resolution No. 390/02 of 17 January 2002, containing the current provisions on the matter, a copy of which is attached.

Is it possible to freeze funds, etc., on grounds of suspicion of terrorist links in the absence of a predicate offence relating to the funds?

The freezing of funds is, in essence, a precautionary or preventive measure which can be applied by the administration and controlled by a judicial organ or by the judiciary. In either case, the pre-existence of *res judicata* involving the possible breach of an inviolable right is always necessary. Thus, the administration could suspend the operations of a financial entity, which would involve freezing funds on deposit, whenever it is at risk of insolvency in order to protect investors. A judge can order an embargo or the general preventive inhibition of a debtor's assets at the request of a creditor in order to protect his debt-claim, and can also order similar measures against a criminal defendant in order to ensure his appearance in court or to secure the evidence or proceeds of the crime investigated or the compensation that must be paid in a criminal conviction. *Res judicata* is a prerequisite in all the above-mentioned cases.

In particular, if there are suspicious funds linked to terrorism, there must be evidence of that link with respect to a crime. In fact, all terrorist activities are connected with the commission of a crime, since terrorist organizational structures are, by their very nature, illegal. Thus, although there is no definition of terrorism in Argentine domestic law, criminal acts committed by terrorists would necessarily fall under the provisions on various forms of illegal associations set out in articles 210, 210 bis and 213 bis of the Penal Code, merely on the grounds of the perpetrators' membership in such associations.

In the second place, once it has been established that the funds suspected of being linked to terrorism are linked by virtue of a crime, their ownership must be determined in order for them to be frozen. If the funds belong to a terrorist organization, an association which would be illegal in and of itself, freeze measures could be applied. If the funds belong to third persons, the links to terrorism would have to be analysed on the basis of objective and subjective elements specified by criminal law in order to consider the extent of their participation in the execution of the illegal act. Thus, there would have to be proof that the third persons actually did supply funds to terrorists and had knowledge that they would be utilized to commit a crime — and even organizing or maintaining an illegal association would be considered a crime. On the basis of this assumption, it would also be possible to

freeze the said funds, provided they in themselves are the instrument and expression of assistance to and collaboration with the illegal association. The extent of participation, for its part, would be shown by how the subject's contribution figured in the execution of the act — thus, participation would have to have been essential or ancillary, that is, without it, the act could not have been committed (Penal Code, article 45) — or by any other form of cooperation (Penal Code, article 46), respectively.

Subparagraph 1 (d)

"(d) Prohibit their nationals or any persons and entities within their territories from making available any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

Please provide an outline of the preventive steps initiated by the Central Bank to protect the financial system from misuse for terrorist purposes.

As indicated in the "Report of the Argentine Republic on the implementation of resolution 1390 (2002) of the Security Council of the United Nations", the fragile economic and financial situation of the Republic in recent times has prompted the implementation of a number of control measures to restrict the movement of bank funds, which apply to all transactions and movements of funds and assets within the Argentine financial system and hence, those referred to in Security Council resolution 1373 (2001).

By Act No. 25,561 on "Public emergency and reform of the foreign exchange system", a "public social, economic, administrative, financial and foreign exchange emergency" was declared (article 1). Accordingly, and in accordance with the generally applicable norms adopted in response to the country's serious economic emergency, the Argentine Republic bans international money transfers out of its financial system. Article 2 (b) of Decree No. 1570 of 1 December 2001 prohibits international transfers, with the exception of those related to foreign trade operations, the payment of costs, withdrawals abroad against credit or debit cards issued in Argentina, or the settlement of financial operations or other operations authorized by the Central Bank of the Argentine Republic.

The Decree also bans the "export of foreign currency and coins and minted precious metals, except through entities authorized by the Superintendency of Financial and Foreign Exchange Entities, with the prior authorization of the Central Bank of the Argentine Republic, or where the amount is less than ten thousand United States dollars (US$ 10,000) or the equivalent thereof in another currency, at the seller's exchange rate of Banco de la Nación Argentina".

The Central Bank of the Argentine Republic has established specific regulations on the scope of exemptions in its circulars to entities in the Argentine financial system. Exemptions shall not be granted in any of the cases referred to in resolution 1373 (2001).

While the restrictions on transactions involving funds and assets in the Argentine financial system are general in scope and, accordingly, not directed *ratione personae* solely at the persons and entities specified in resolution 1390 (2002), the system of bans, authorizations and restrictions they comprise meets the requirements of resolution 1373 (2001). The Argentine Republic has thus indirectly complied with the general substance of Security Council decisions in this area.

What preventive control and surveillance measures has Argentina put in place to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted from their stated purposes, in particular to the financing of terrorism?

Within the bounds of the Autonomous City of Buenos Aires, the General Inspectorate of Justice permanently oversees the functioning of those entities established to carry out the kinds of activities on which clarification is being sought. This function is set out in article 10 of Act No. 22,315 and in various regulatory provisions, particularly Decree No. 1493/82 (articles 30 to 33) and General Resolution No. IGPJ 6/80 (articles 91 to 144).

The above-mentioned monitoring is done at a local level and is limited in scope to the jurisdiction of the domicile established by the entity, either when it was first established and requested authorization to operate as a legal entity, or on changing its location. Oversight is applicable only within the confines of the city of Buenos Aires, and our reply to this question should be understood in that context (article 2, Act No. 22,315).

In exercising its oversight function, the General Inspectorate of Justice ensures that entities duly comply with their stated purposes, and that the purposes set forth in their statutes are indeed adhered to and that they do not distort or deviate from those stated purposes (article 30, Decree No. 1493/82). This involves overall control to ensure that such entities' resources are not diverted for any but their stated purpose. If serious acts entailing a violation of the law, the entity's statutes or by-laws, or in which the public interest must be protected, are uncovered, or if irreparable irregularities are found or the entities are unable to comply with their stated purpose, the General Inspectorate of Justice shall be authorized to request the Ministry of Justice, Security and Human Rights to rescind its authorization and to dissolve and liquidate the entities in question (article 10 (j), Act No. 22,315).

Furthermore, in accordance with the provisions of article 21 of Act No. 25,246 on Concealment and Laundering of Assets of Criminal Origin, all persons specified in article 20, including legal entities which receive donations or contributions from third parties (paragraph 18), must comply with the following requirements:

(a) Obtain from their contributors documents which constitute credible proof of their identity, legal capacity, domicile and any other information required in each particular case to carry out any type of activity related to the entity's stated purposes. This requirement may be waived, however, if the amounts involved are less than the minimum specified in the respective circular. When contributors are acting as agents for third persons, the necessary precautions should be taken to establish the identity of the person in whose behalf they are acting ...;

(b) Report any suspicious act or operation, apart from the amount involved. For the purposes of this law, suspicious operations shall be deemed to be those

transactions which, based on the customs and practice of the activity in question, and the experience and capacities of the reporting parties, are unusual or unjustified from an economic or legal standpoint, or are uncommonly or unnecessarily complex, whether they are one-time or recurring transactions.

Subparagraph 2 (b)

"(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;"

Please describe the mechanism available in Argentina to provide early warning of anticipated terrorist activity to States outside the MERCOSUR group of countries.

Act No. 25,520 on National Intelligence, adopted on 27 November 2001, forms the legal, organic and functional basis for the National Intelligence System created under it, and provides the structure for both the criminal intelligence agency and its activities, which, in accordance with Domestic Security Act No. 24,059 is currently the responsibility of the Ministry of Justice, Security and Human Rights, particularly its National Criminal Intelligence Directorate.

Where an early warning constitutes a national intelligence activity and is obtained through the exchange of information, the provisions of Act No. 25,520 are applied. Article 7 of that Act provides that "the Intelligence Secretariat under the President of the Nation shall be the supreme agency of the National Intelligence System and its overall objective shall be to direct that System".

In particular, article 13 of that same law assigns, inter alia, the following functions to the Intelligence Secretariat: "direct and coordinate the activities and operation of the National Intelligence System, as well as relations with intelligence agencies of other States."

In that same vein, article 4 of the regulations under this Act, adopted by Decree No. 950 of 5 June 2002, annex I, establishes that "the Intelligence Secretariat under the Office of the President of the Nation shall adopt such norms as may be necessary for the operation of the National Intelligence System, in accordance with the duties assigned to it under article 7 of the Act."

The National Criminal Intelligence Directorate of the Domestic Security Secretariat, within its sphere of competence and through its specific ties to the federal and provincial police forces and its participation in the Specialized Working Group on Terrorism at the subregional level, contributes to the National Intelligence System as provided by existing norms.

Furthermore, bilateral agreements on cooperation in fighting terrorism provide for the exchange of information, and for communicating early warnings. In particular, the Argentine Republic is a party to various bilateral conventions on fighting terrorism, enumerated in document S/2001/1340, pages 26 and 27 and, in addition, to treaties with Israel (1996) and Tunisia (1996).

In turn, it should be noted that the Ministry of the Interior — which, until January 2002, was responsible for domestic security affairs which have now been turned over to the Ministry of Justice, Security and Human Rights by Decree No. 1210 of 10 July 2002 — concluded inter-institutional agreements with its

counterparts in other countries, including with the authorities of France (1994), Spain (1997) and the Russian Federation (1998).

At the Inter-American level, mention should be made of the Argentine Republic's participation in the Inter-American Committee against Terrorism (CICTE), established in June 1999 by resolution No. 1650/99 of the General Assembly of the Organization of American States (OAS). Argentina serves as Vice-President of CICTE, whose functions in the areas of cooperation and exchange of information have been laid down in articles 17 and 18 of the Inter-American Convention against Terrorism.

CICTE is comprised of competent national authorities of OAS member States and its main purpose is to develop cooperation in order to prevent, combat and eliminate terrorist acts and activities. Its functions are, inter alia, to establish a technical cooperation framework, taking into account the lines of action proposed in the annexes to the Commitment of Mar del Plata; develop, coordinate and evaluate the recommendations of government experts; encourage member States to ensure that their domestic legislation attempts to address and prevent the threat of terrorism; and coordinate and assist member States in the exchange of information on activities of persons, groups, organizations and movements linked to terrorist acts and their possible sources of financing. This includes informing member States of any possible early warnings.

Sub-paragraph 3 (d):

3. *Calls* upon all States to:

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

The CTC would welcome a report, in relation to the international conventions and protocols relating to terrorism, of progress made by Argentina in:

- enacting legislation and making other necessary arrangements to implement those conventions and protocols to which it is a party;

  See reply to sub-paragraph 1 (d) above.

- becoming a party to the instruments to which it is not yet a party.

As we reported at the appropriate time, Argentina is a party to nine of the twelve international counter-terrorism agreements currently in force. The National Congress is considering the three remaining instruments with a view to possible adoption. The International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997) was submitted to Congress on 29 November 2001, and has so far been approved by the Senate but not by the lower house. The International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999), submitted to Congress on 30 April 2002, has also been approved by the Senate. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1988) was submitted to Congress on 8 May 2002.

Argentina advocated the adoption of the Inter-American Convention against Terrorism and played an active part in its negotiation. It was signed by the Argentine Government when it was opened for signature in Bridgetown, Barbados, on 3 June 2002, on the occasion of the session of the General Assembly of the Organization of American States. Procedures have begun for its submission to Congress.

Subparagraph 3 (e):

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

Have the offences mentioned in the relevant international conventions and protocols on terrorism been included as extraditable offences in the bilateral treaties to which Argentina is party?

To comply with an extradition request, Argentina does not require an extradition treaty to be in force. Pursuant to Act No. 24,767 on international penal cooperation, compliance with an extradition request from a foreign State is obligatory, subject to the conditions set out in the Act and the requirement of reciprocity.

Anti-terrorism treaties comprise a rule whereby the offences that they enumerate are to be considered as belonging to the category of extraditable offences in any extradition treaty in force between States which were parties before the entry into force of the Convention and those countries which, like Argentina, do not make extradition conditional upon the existence of a treaty, subject to the conditions provided for in their legislation. Such rules are applicable directly, requiring no legislative amendments or modification of existing bilateral treaties.

As for the requirement of double criminality, Supreme Court jurisprudence is that the verification of double criminality does not require the offence to have the same legal designation; in other words, the classification of the offence in criminal law need not be identical. The different designations of the illegal act in the laws of the requesting State and of Argentina therefore entail no obstacle to extradition provided that, in substance, both laws penalize the same criminal offence. As indicated above, the great majority of the actions described in the conventions on terrorism are covered under the definitions of various offences in Argentine's domestic legal system, the double-criminality requirement would therefore be satisfied with any country submitting an extradition request to Argentina on the basis of those offences.

Other matters:

Could Argentina please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

Pursuant to the decision by Argentina, in accordance with the Charter of the United Nations, to combat by all available means the threats to international peace and security resulting from acts of terrorism, and as a part of the actions undertaken, the Office of the Special Representative for Matters Concerning Terrorism and

Related Offences (RETOD) was created under the Ministry of Foreign Affairs, International Trade and Worship.

RETOD was created by Ministerial Decision No. 187 of 7 February 2002, a copy of which is attached to this presentation. The Office comes under the authority of the Foreign Policy Department of the Ministry of Foreign Affairs. The Department is responsible for coordinating policies, activities and measures relating to compliance with Security Council resolution 1373 (2001) and other related United Nations resolutions and for policies, activities and measures resulting from actions by Argentina within the regional framework of the inter-American system, in the regional framework of MERCOSUR and in that of the Ibero-American Conference, the Rio Group and at the bilateral level both in the area of competency of the Ministry and in relations with other bodies and departments of the Argentine Government.

The final preambular paragraph of Ministerial Decision No. 187 reads as follows: "Considering that, in accordance with the terms of United Nations Security Council resolution 1373 (2001), the Government of Argentina notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and a threat to international security".

Also attached to this document is an organizational chart of the Ministry of the Interior relating to migration control and another chart prepared by the Ministry of Justice and Human Rights concerning police and security activities.

The structure of the Argentine Federal Police includes a Directorate for International Terrorism and Complex Offences, created in 2001, under the direct authority of Headquarters Command. The Directorate is responsible for investigating criminal activities which are thought to have been committed either by terrorist organizations or by "gangs" in such a way as to reveal the structure similar to that of an enterprise, with complex planning, and those designated by the Ministry of Justice. The following are directly under the authority of the Directorate:

- The Interpol Department,
- The Department of the Anti-Terrorist Investigation Unit (DUIA),
- The Department for Complex Offences,
- Special Federal Operations Group Division (GEOF),
- The Division for the Investigation of Discriminatory Behaviour,
- The Complex Offences Operations Division,
- Complex Offences Intelligence Division,
- The Three Borders Section.

The structure and functioning of these departments is designed to enable them at the operational level to meet the necessary requirements for combating an activity as specific and complex as terrorism. Each of the departments is assigned its own

particular duties so that, overall, they are able to respond to complex situations such as those resulting from terrorist acts.

The Anti-Terrorist Investigation Unit (DUIA) works on the prevention, detection and investigation of any terrorist act considered to be connected with international terrorism, in addition to the internal collaborative activities resulting from such acts. It is also responsible for maintaining links with special forces and anti-terrorist police services in other countries in order to share information on particular cases under investigation or on the prevention of possible incidents.

The Interpol Department, in addition to performing the duties inherent to the mandate given by the International Criminal Police Organization (Interpol) to National Central Offices, is involved in administering the emerging international cooperation within the MERCOSUR system and under other international agreements establishing such obligations for the Argentine Federal Police in the area of cooperation for the prevention and suppression of crime. It is also responsible for centralizing and coordinating all information received from Interpol bodies, making possible the processing and distribution of such information, which is essential for the prevention and suppression of transnational criminal activities such as terrorism.

The Department for Complex Offences, through its Operations and Intelligence Divisions, works on the investigation, analysis, solving and suppression of offences falling within the competence of the Federal Justice System, resulting from the activities of criminal organizations at the national or international level.

The Special Federal Operations Group Division (GEOF) is made up of specially trained agents who regularly receive physical, tactical and operational training. This is the elite response team of the Argentine Federal Police in crisis situations, especially those resulting from terrorist acts.

The Division for the Investigation of Discriminatory Behaviour is responsible for dealing with incidents and activities described and penalized under anti-discrimination legislation and international agreements. At the prevention stage, it can detect persons or groups whose fanatical or fundamentalist ideologies or tendencies are such that they may be used or taken over by terrorist groups for illegal purposes.

Lastly, the Three Borders Section is the essential tool for obtaining, preparing, processing, analysis and assessment of information from the Three Borders region between Argentina, Paraguay and Brazil.

In carrying out its mission, the International Terrorism and Complex Offences Directorate, with its subordinate departments, is authorized to make use, for a predetermined period and subject to notification of headquarters, of the staff, equipment and financial resources of the police, and to use it for the execution of planned operations.

The territorial scope of the federal police covers the whole country, with its centre of gravity in the federal capital.

As for the Gendarmería Nacional, its geographical and legal scope in the area of terrorism is defined by Gendarmería Nacional Act No. 19,349 and its Regulatory Decree No. 83/74. Chapter I (Definition) and Chapter II (Responsibilities) of the Act defines the "Frontier Security Zone and other areas designated for the purpose" as the territorial scope of the activities of this force.

The Gendarmería Nacional, as the force with primary responsibility for mountain passes and frontier zones, has concluded a number of cooperation agreements with similar forces in neighbouring countries on issues including that of collaboration in combating terrorism. Such agreements have been signed with Carabineros of Chile and the National Police of Bolivia and of Paraguay. The structure of the Gendarmería Nacional includes:

- A Special Forces Section with the capacity to counteract terrorist activities such as hostage-taking and the seizure of buildings or of aircraft on the ground. This Section is equipped with weapons and technical material corresponding to its requirements.
- A Special Bomb Disposal Group, with the ability to take preventive measures in the detection of explosive devices and to disarm such devices; it is also equipped with the latest equipment.
- A Scientific Police Department, with the capacity to support investigations by providing expert opinions in areas such as ballistics, explosives, handwriting and various materials, using the latest technical equipment.
- A Special Unit for Judicial Investigations and Procedures, supporting the federal justice system in any investigation or procedure being carried out in response to terrorist acts; it has the necessary staff and resources for that task.

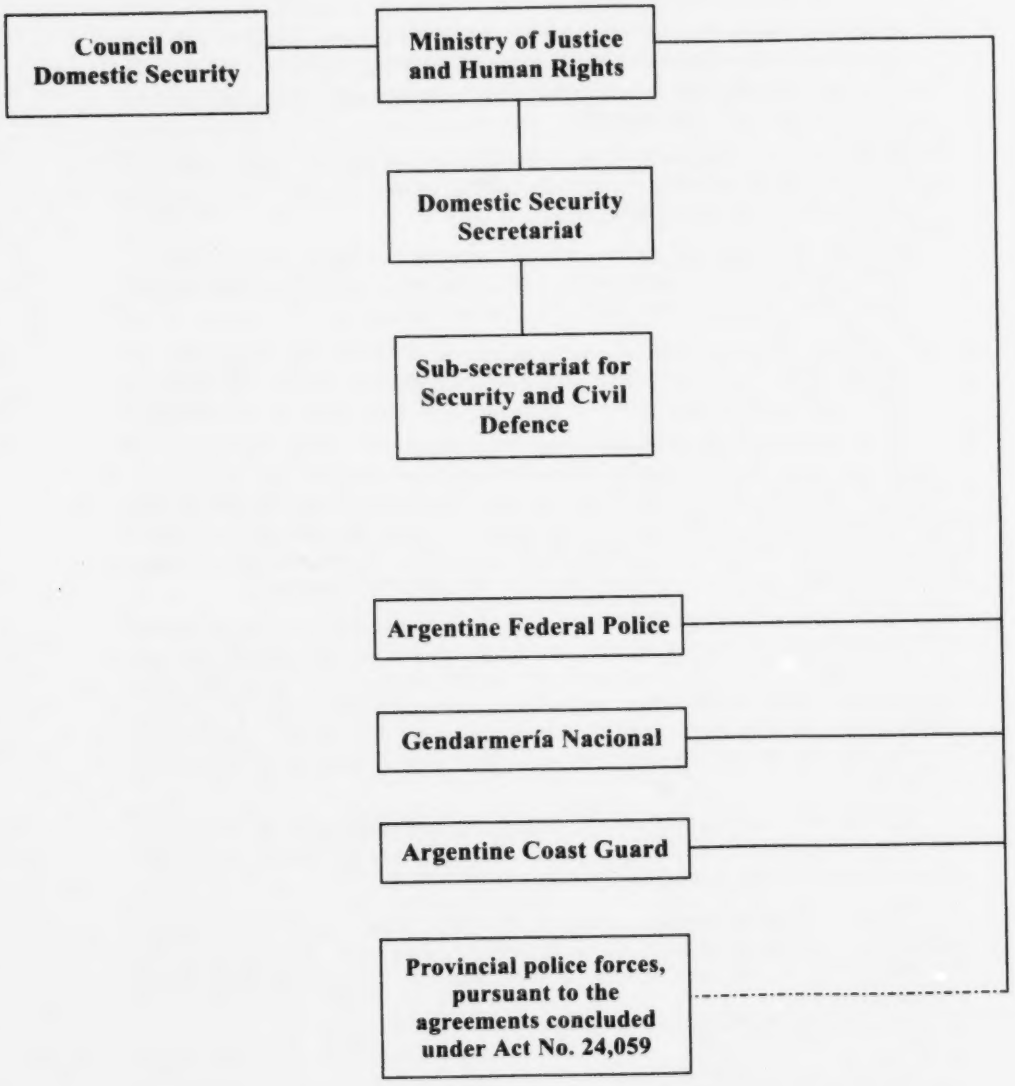
While the units described above can take some part in the prevention of terrorist acts, their work is usually carried out once the incident has taken place. Essentially, prevention efforts are based on constant collection of information and intelligence-gathering at the tactical and strategic levels, in order to give early warnings so that the necessary measures can be taken. The responsibility for this task lies with the Intelligence Directorate of the Gendarmería Nacional.

The Argentine Coast guard, a force which structurally and functionally comes under the Ministry of Justice and Human Rights, is part of the internal security system (article 7 (f) of Act No. 24,059) and carries out its tasks in the following specific areas: seas, rivers, lakes and other navigable waterways in Argentina; coastlines and beaches; ports under national jurisdiction, ships flying the Argentine flag, maritime border security zones, and any other place as required by the federal justice system.

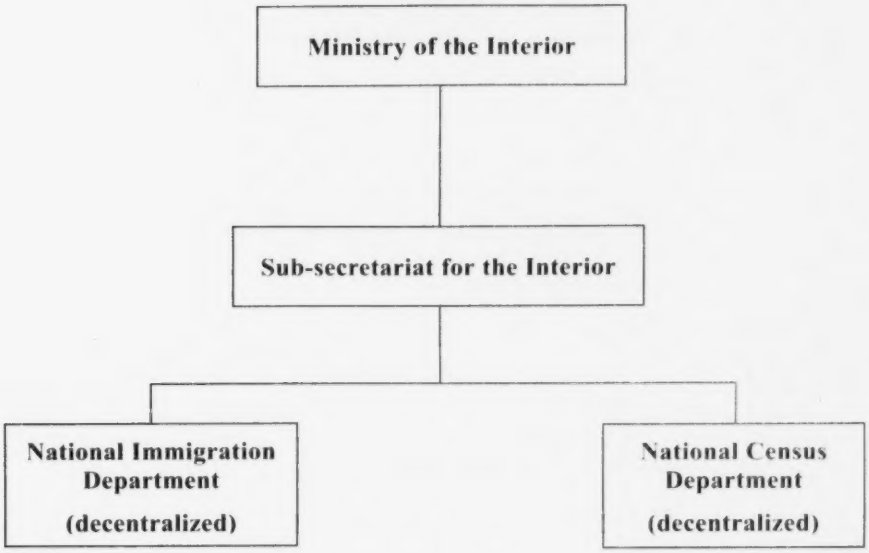
In relation to units having specific tasks in the prevention and suppression of terrorism, this force has intelligence sections throughout its jurisdiction, under the functional control of the Intelligence Service.

These intelligence sections play an important part in counter-terrorism, maintaining constant monitoring of all persons or groups which may engage in activities which in one way or another may harm the internal security of the Argentine Republic.

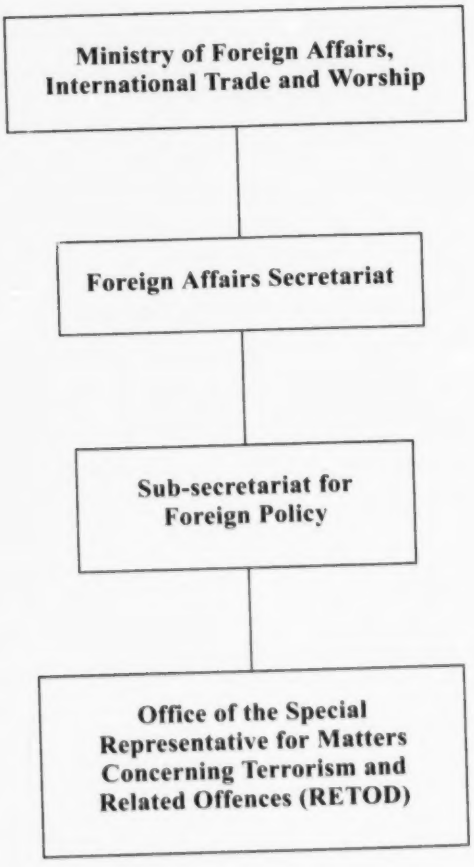
Partial organizational chart of the Ministry of Justice and Human Rights


Council on Domestic Security
Ministry of Justice and Human Rights
Domestic Security Secretariat
Sub-secretariat for Security and Civil Defence
Argentine Federal Police
Gendarmería Nacional
Argentine Coast Guard
Provincial police forces, pursuant to the agreements concluded under Act No. 24,059

Partial organizational chart of the Ministry of the Interior



Partial organizational chart of the Ministry of Foreign Affairs, International Trade and Worship


Ministry of Foreign Affairs, International Trade and Worship
Foreign Affairs Secretariat
Sub-secretariat for Foreign Policy
Office of the Special Representative for Matters Concerning Terrorism and Related Offences (RETOD)

United Nations S/2002/1024

Security Council

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Letter dated 9 September 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 5 June 2002 (S/2002/625).

The Counter-Terrorism Committee has received the attached supplementary report from Tunisia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its attachment to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-59251 (E) 300902 021002

Annex

[Original: French]

Note verbale dated 30 August 2002 from the Permanent Mission of Tunisia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Tunisia to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) and, with reference to his letter of 28 May 2002, has the honour to transmit to him herewith the replies of Tunisia to the questions contained in that letter (see enclosure).

Enclosure

[Original: Arabic]

Republic of Tunisia

Clarifications and information supplementary to the report submitted by Tunisia on measures taken by it in implementation of Security Council resolution 1373 (2001)*

Important observation addressed to the Counter-Terrorism Committee

This report comprises two documents, numbered document I and document II.

- Document I contains the reply to the questions relating to paragraphs 1, 2, 3 and 4 of resolution 1373 (2001), with the exception of subparagraph 2 (b) of the resolution.
- Document II contains information of a confidential nature and is therefore not for publication or for perusal outside the framework of the Counter-Terrorism Committee. It relates to the questions put by the Committee concerning subparagraph 2 (b) of resolution 1373 (2001).

Document I

In response to the letter dated 28 May 2002 from the Security Council Committee on counter-terrorism addressed to Tunisia and containing a number of questions seeking clarification on measures taken by the Tunisian Government to combat terrorism as follow-up to the report submitted pursuant to Security Council resolution 1373 (2001), we present the following clarifications and information on this matter according to the sequence of the questions put by the Committee.

Paragraph 1 of resolution 1373 (2001)

Subparagraphs 1 (a) and (b) of resolution 1373 (2001):

1. *Please report on progress made with regard to the preparation of the Tunisian comprehensive bill relating to the combating of terrorism.*

2. *What are the intentions of the Tunisian Government for incorporating offences relating to the financing of terrorism in that bill?*

1. Progress made with regard to the preparation of the Tunisian comprehensive bill on the combating of terrorism

The comprehensive bill on the combating of terrorism was submitted to the National Assembly, following its consideration by the Cabinet on 9 January 2002, and is being studied by the competent committees of the National Assembly.

* The annexes are on file with the Secretariat and are available for consultation.

2. Intentions of the Tunisian Government for incorporating offences relating to the financing of terrorism in the bill

The Tunisian comprehensive bill on the combating of terrorism criminalizes the acceptance of deposits made under an assumed name and requires that the authorities be provided with any information relating to transactions or dealings possibly connected with terrorist crimes or involving the perpetrators of such crimes. Tunisian law in any case prohibits secret or encoded accounts. The above-mentioned bill as submitted incorporates provisions relating to the combating of the financing of terrorism by criminalizing such financing as acts of complicity.

Subparagraph 1 (c) of resolution 1373 (2001):

1. *Please provide an outline of sections 5, 28, 97 and 100 of the Code of Criminal Procedure dealing with freezing of funds, financial assets and economic resources.*

2. *Are non-resident persons allowed to deposit funds directly from abroad in financial institutions in Tunisia?*

1. Contents of sections 5, 28, 97 and 100 of the Code of Criminal Procedure dealing with freezing of funds, financial assets and economic resources

Section 5 of the Criminal Code, "Penalties", lays down the following:

(a) Principal penalties:

1. Execution;

2. Life imprisonment;

3. Imprisonment for a set term;

4. Community service;

5. A fine;

(b) Complementary penalties:

- Prohibition on residence or deportation;
- Administrative surveillance;
- Confiscation of assets in the cases provided for by law;
- Special confiscation;
- Penal relegation in the cases provided for by law;
- Being barred from the exercise of the following rights and privileges:

(i) Public office or certain professions such as attorney, public official, physician, veterinarian, midwife, director of an educational institution or an employee thereof however designated, notary public, legal guardian or expert or witness before a court except for the purpose of merely giving statements;

(ii) The bearing of arms and the holding of all officially honorific orders;

(iii) The right to vote.

Some of the provisions follow.

Section 28 of the Criminal Code provides:

"Special confiscation shall mean that the State Treasury shall take the proceeds of the crime or the implements that have been or might have been used in the crime.

"In the event of conviction, the judge may order the confiscation of the items used or prepared for use in the commission of the crime and also the objects resulting from the crime regardless of the owner thereof.

"In all cases, items the manufacture, use, possession or sale of which is prohibited, so that ownership thereof constitutes a crime, shall be liable to a confiscation order."

Section 97 of the Code of Criminal Procedure provides:

"The examining magistrate shall seek out any papers and items that may help to reveal the truth and shall confiscate them.

"A list of the confiscated items shall be drawn up in the presence of the suspect or the person in whose possession they were found, where possible, and a report on the confiscation shall be drawn up. The confiscated items shall, as the case may be, be placed in a sealed container or file or labelled with the date of confiscation and the case number. Except for a serious or less serious offences committed in flagrante delicto, police officers shall not have the same right as an investigating magistrate to follow the above procedure, except in the event of imminent danger."

Section 100 of the Criminal Code provides:

"Any person claiming entitlement to items placed in the charge of the judicial authorities may request the return thereof from the examining magistrate and, in the latter's refusal from the indictment division, and both shall rule solely on the basis of the request. Any confiscated item not applied for by the owner thereof within a period of three years of the confiscation order or the handing down of the judgement shall become State property."

2. Are non-resident persons allowed to deposit funds directly from abroad in financial institutions in Tunisia?

Non-resident persons may deposit funds directly from abroad in Tunisian banks through currency transfers.

It should, however, be recalled in this regard, as was explained in Tunisia's report on the implementation of Security Council resolution 1373 (2001), that the accounts that will receive these deposits already comprise all data concerning the holders, whether they be natural persons or artificial persons. This makes it possible to identify such persons and ascertain their nature. The Tunisian Central Bank also monitors the opening and operation of accounts in foreign currency and convertible dinars, and the Tunisian Central Bank must be provided monthly by the authorized agents with a detailed statement of accounts in foreign currency and convertible dinars opened by non-residents.

Subparagraph 1 (d) of resolution 1373 (2001):

Please provide clarifications concerning:

1. *Measures adopted to ensure that terrorist acts are not financed through charitable or religious organizations;*

2. *Measures used with regard to the transfer of funds in Tunisia.*

1. Measures adopted to ensure that terrorist acts are not financed through charitable or religious organizations

Tunisia has endeavoured to regulate this issue from the viewpoint of the establishment of organizations, the monitoring of their activities and the conditions for their dissolution, in a climate of transparency and clarity, and has regulated this activity in a legislative and organizational framework that prevents the exploitation of this field by terrorist parties or elements.

Within this framework, Tunisia has made the formation and the establishment of associations of any kind whatsoever subject to fundamental conditions relating to the general principles of the Code of obligations and contracts and the provisions of Tunisian Act No. 154 of 1959 (7 November 1959) concerning organizations. They are also subject to specific administrative measures without which no organization can be established and regarded as a legal entity, particularly with regard to the area of activity and identification of their founders and members, as well as a precise specification of the source and volume of their resources, the person responsible for their disbursement and the beneficiaries.

Tunisian legislation also laid down the procedure for the establishment of foreign non-governmental organizations within the framework of Basic Law No. 80 of 1993 (26 July 1993) and regulated the modalities of the acquisition of the assets necessary for their activity under the legislation currently in force, the disposal thereof and the acceptance of donations, bequests and subsidies. This law also laid down conditions relating to the residence of their directors and employees and their activities in Tunisia.

The competent security authorities monitor the activities of suspect organizations and associations located abroad, particularly those set up in countries with which Tunisia has counter-terrorism agreements and which exchange with Tunisia various types of data relating to the combating of this phenomenon and data on the sources of the financing of such organizations and associations. The security forces also seek to track their resources and the mode of their disbursement at home and abroad, as well as endeavouring to dry up the sources of their financing.

2. Measures and instruments available to regulate alternative funds transfer arrangements such as the system known as "hawala"

In Tunisia, there are no alternative funds transfer arrangements, since all transfers of funds to or from foreign countries are necessarily effected through the banks or through the National Post Office.

These bodies are the only ones qualified as authorized agents for this purpose under the legal provisions in effect in Tunisia with regard to exchange, namely the Exchange and Foreign Trade Code promulgated by Act No. 18 of 1976 (18 January

1976) and the provisions adopted for the implementation thereof, in particular, Order No. 608 of 1977 (27 July 1977).

The exclusive jurisdiction of the above-mentioned bodies in this area means that persons with manual exchange powers, the legally authorized exchange brokers in Tunisia, cannot intervene in the process of transfer operations, since their function is limited to manual exchange in one direction, namely the purchase of foreign currency against the Tunisian dinar. This function is itself subject to control, since it can be exercised only by persons who have been commissioned by an authorized agent. They act for the account of the authorized agent who commissioned them, are responsible to him and are subject to precise rules, including the requirement that all manual exchange transactions be registered and that validated documents be kept for a period of 20 years.

On the other hand, it should be explained that the banks and the National Post Office are themselves subject, with regard to their intervention in the execution of financial transactions with foreign countries, to precise rules set forth in the legal instruments referred to, rules aimed at the exercise of control over such transactions.

Paragraph 2 of resolution 1373 (2001)

Subparagraph 2 (a) of resolution 1373 (2001):

1. *Please provide an outline of the sections of the Criminal Code that relate to terrorist offences.*

2. *Please outline the measures adopted to prevent recruitment of individuals to carry out terrorist activities.*

3. *Please explain how Tunisia regulates the manufacture, possession and transport of weapons and explosives in its territory.*

1. Provisions of the sections of the Criminal Code relating to terrorist offences

Section 52 bis of the Criminal Code provides:

> "The perpetrator of a crime categorized as terrorist shall be liable to the penalty laid down for the crime itself, and the penalty may not be reduced to less than one half of the full sentence.
>
> "Any crime relating to an individual or collective project aimed at damage to persons or property for the purpose of intimidation or causing alarm shall be categorized as terrorist.
>
> "Acts of incitement to hatred or racist or religious fanaticism shall also be dealt with as terrorist offences, whatever the means used.
>
> "A sentence of five years' administration surveillance shall be mandatory. Sentences cannot run concurrently.
>
> "The provisions of section 134 of this Code shall apply."

The crimes covered in the Criminal Code may be categorized as terrorist if they meet the conditions of section 52 bis of the Code.

Sections relating to external attacks on the security of the State

Section 61 provides:

"Any Tunisian or alien shall be deemed to perpetrate an attack on the external security of the State and shall be liable to the penalties laid down in section 62 of this Code if he:

1. Exposes Tunisia to a declaration of war by reason of hostile acts carried out by him without the consent of the Government;

2. Exposes Tunisians to reprisals by reason of acts committed by him without the consent of the Government;

3. Recruits troops in peacetime in Tunisian territory for the benefit of a foreign Power;

4. Corresponds or establishes relations in wartime with the subjects or agents of an enemy Power;

5. Engages directly or indirectly in trade in wartime with the subjects or agents of an enemy Power in spite of the decreed embargo."

Section 62 provides:

"The perpetrator of an attack on the external security of the State shall be punished by imprisonment for a term of up to 12 years if the offence is committed in wartime and for a period of five years if it is committed in peacetime. An attempt to commit such offence shall also be punishable, and the provisions of section 53 may be applied. In all cases, the complementary penalties set forth in section 5 of this Code, ranging from a minimum of five years to a maximum of 20 years may also be imposed."

Sections relating to internal attacks on the security of the State

Section 72 provides:

"Any person who perpetrates an attack with the intention of changing the form of government or provoking armed attacks among the population or disorder, slaughter or looting in Tunisian territory shall be liable to execution."

Section 74 provides:

"Any person who assembles and arms groups, or leads armed groups, for the purpose of plundering the assets of the State or of individuals or seizing or destroying movable or immovable property shall be liable to execution. This same penalty shall apply to any person who by force or otherwise prevents the police from putting down such attacks."

Section 75 provides:

"Any person, who knowing the purpose or nature of such groups, consents to join them or supplies them without coercion with weapons, shelter or hiding or meeting places shall be liable to 20 years' imprisonment and a fine of 200,000 dinars."

Section 76 provides:

"Any person who sets on fire or destroys with explosive military premises, ammunition depots or other State property shall be liable to execution."

Section 77 provides:

"If an armed or unarmed group carries out an attack on persons or property, each member of such group shall be liable to 10 years' imprisonment."

Section 78 provides:

"If an armed or unarmed group attacks a person's home or workplace or dual use premises, each member of such group shall be liable to three years' imprisonment."

Sections relating to attacks on public authority and criminal complicity

Section 131 provides:

"The formation of any group for any period, with any number of members and on the basis of any agreement reached, for the purpose of preparing or committing an attack against persons or property shall be deemed to constitute a crime against public security."

Section 132 provides:

"Any person involved with a group or participating in an agreement of the kind referred to in section 131 of the Code shall be liable to six years' imprisonment. The penalty shall be up to 10 years' imprisonment in the case of the leaders of such groups and likewise if a child or a number of children under the age of 18 are used in the acts set forth in section 131 of the Code."

Section 133 provides:

"Any person who deliberately prepares a meeting place for members of a criminal group, assists them with money or in benefiting in the proceeds of their criminal actions, or provides them with lodging or a hiding place shall be liable to the penalties laid down in the first paragraph of the preceding section.

"The penalty shall be up to 10 years for the leaders in such complicity."

- **Criminal offences against persons**

– Murder

Section 201 provides:

"Any person who commits premeditated murder by any means whatsoever shall be liable to execution."

Section 205 provides:

"Any person who commits murder shall be liable to life imprisonment, save in the cases specified in the preceding sections."

Section 208 provides:

"Killing resulting from striking and wounding without intent to kill shall be punishable by 20 years' imprisonment, this penalty to be increased to life imprisonment where the striking and wounding has the element of premeditation."

Section 209 provides:

"Persons participating in a struggle involving violence that results in death in the manner set forth in the preceding section shall be liable on the sole grounds of complicity to two years' imprisonment, without prejudice to the imposition of the penalties required to be imposed on the perpetrators of violence."

- **Violence and threats**

Section 218 provides:

"Any person who deliberately inflicts wounds, blows or any other type of violence not specified in the provisions of section 319 shall be liable to two years' imprisonment and a fine of 1,000 dinars.

"If the attacker is a descendant or spouse of the victim, the penalty shall be two years' imprisonment and fine of 2,000 dinars.

"In the event of attempted concealment of the act, the penalty shall be three years' imprisonment with a fine of 3,000 dinars.

"The waiving of rights by the victimized ascendant or spouse shall entail a stay of prosecution, trial or execution of sentence. An attempt to commit such offence shall also be punishable."

Section 219 provides:

"If any of the types of violence specified above results in the loss of a body part or a portion thereof, depravation of the use thereof, disfigurement or permanent damage or disability not exceeding 20 per cent, the offender shall be liable to five years' imprisonment.

"The penalty shall be six years' imprisonment if the degree of damage or disability resulting from the aforementioned assaults exceeds 20 per cent.

"The penalty shall be increased to 10 years if the offender is a descendant of the victim, whatever the degree of the damage and even if charges are dropped."

Section 220 provides:

"Persons who participate in a struggle in the course of which blows or wounds of the kinds mentioned in sections 218 and 219 are inflicted shall be liable to 6 months' imprisonment on the sole grounds of participation, regardless of the penalties laid down in those two sections for those who actually carried out the beatings."

Section 237 provides:

"A person who kidnaps or attempts to kidnap, abducts or removes, or causes the kidnapping, abduction or removal of, a person from his former location by using deceit, violence or threat shall be liable to 10 years' imprisonment.

"The penalty shall be increased to 20 years if the victim of the kidnapping or abduction is a civil servant, a member of the diplomatic or consular corps, a member of the family of such person or a minor under 18 years of age. This penalty shall apply whatever the category of the victim if the kidnapping or diversion is committed for the purpose of ransom or execution of an order or condition.

"The penalty shall be life imprisonment if the kidnapping or abduction is carried out using armed force, disguise, falsified identity or an order falsely represented as emanating from the public authority and likewise if bodily injury or illness results from such acts.

"Such crimes shall be punishable by execution if they involve or result in death."

- **Attacks on property**

Section 304 provides:

"Any person who deliberately causes damage to the movable or immovable property of another, except by means of explosion or fire, shall be liable to three years' imprisonment and a fine of 2,000 dinars.

"If the damage impairs the usefulness of item in question or jeopardizes its existence, the punishment shall be five years' imprisonment and a fine of 3,000 dinars.

"Any attempt to commit such offence shall entail the same penalty."

Section 306 provides:

"The mandatory penalty shall be 20 years' imprisonment if the damage or death occurs through the use of explosive devices, without prejudice to the imposition of the penalties laid down for murder. The perpetrator shall incur a penalty of up to 20 years' imprisonment on the sole grounds of placing an explosive device on the public highway in a populated place with criminal intent."

Section 306 bis provides:

"Any person who seizes and takes over any means of transport (land, sea or air) by threat or violence shall be liable to 10 years' imprisonment.

"The penalty shall be 20 years' imprisonment if such act results in injury or illness and life imprisonment if it results in the death of one or more persons. This is without prejudice to the application of sections 28, 201, 203 and 204 of this Code where necessary."

Article 307 provides:

"The penalty of life imprisonment shall be imposed on any person who directly or otherwise sets fire to buildings, vessels, vehicles, depots, populated workplaces or workplaces equipped for personnel, passenger-carrying railroad or other cars or passenger-carrying vehicles forming part of a convoy, whether or not they belong to the person setting the fire."

Article 308 provides:

"The mandatory penalty shall be 20 years' imprisonment if the premises set on fire were not populated or not intended to be so, and the penalty shall be reduced to 10 years if the site of the fire is the property of the person who set the fire."

- **Public health offences**

Section 310 provides:

"Any person who deliberately places noxious or poisonous substances in drinking water intended for human beings or animals shall be liable to one year's imprisonment, without prejudice to the penalties laid down in sections 215 and 219 of this Code, where necessary, and the operation of the Order issued on 10 Rajab A.H. 1314/15 December A.D. 1896. The penalty shall be imposed in the event of an attempt to commit the offence."

2. Measures adopted to prevent recruitment of individuals to carry out terrorist activities

The acts of recruiting and training persons to carry out terrorist activities are criminalized as principal offences and not as acts of complicity.

In this context, our country strives to isolate extremist groups and to prevent their swaying certain elements under the cover of religion and with the incentive of humanitarian values by adopting a multifaceted approach — economic, social, educational and other — with the aim of eliminating the causes leading to the emergence and growth of the scourge of terrorism, such as marginalization, exclusion, extremism and poverty, and in order to pull the rug from under the feet of terrorist groups and prevent them exploiting the social circumstances of underprivileged and unemployed youth segments and beguiling and polarizing them.

3. How Tunisia regulates the manufacture, possession and transport of weapons and explosives in its territory

The question of weapons is regulated by Act No. 33 of 1969 (12 June 1969) concerning the classification, acquisition, marketing, repair and carrying of weapons. Weapons and ammunition are divided into the following categories:

Category 1. Firearms and their ammunition designed for military operations by land, sea or air;

Category 2. Defensive weapons and their ammunition, as well as weapons used for marksmanship and shows and weapons normally used for decoration and their ammunition;

Category 3. Hunting weapons and their ammunition;

Category 4. Bladed weapons;

Category 5. Antique weapons and ammunition and air guns or 6-millimetre or 9-millimetre guns, which are regarded as light weapons.

There is an absolute ban on the introduction into the country of category 1 weapons and their ammunition, whether assembled or dismantled (except in the case of the armed forces and the internal security forces), and on no account may such weapons be given to private persons or deposited with them.

The above-mentioned Act also deals with the question of possession and transfer of the other categories of weapons, which must be covered by personal licences obtained in advance from the offices of the Ministry of the Interior. The licences must contain all information about the person concerned, as well as the technical specifications of the weapon licensed to him.

It should be mentioned that authorization to own weapons is denied to persons under tutelage, minors under the age of 20 and any person convicted of an offence under public law (vagrancy, beggary, theft, fraud, breach of trust, smuggling, violent assault against persons, insurrection, concealment of criminals, living off the proceeds of prostitution, inciting young people to depravity and attacks counter to decency). This ban is permanent in the case of anyone convicted of a serious offence and expires five years after the date of the completion of service of sentence in the case of persons convicted of a less serious offence (except in the case of non-intentional offences). No person who has received treatment in a psychiatric hospital may acquire or possess a weapon or ammunition unless he produces a certificate from a psychiatric specialist proving that he is of sound mind.

Chapter V of this Act lays down penalties for any infraction of the legal provisions regulating activities relating to weapons: a term of up to 10 years' imprisonment and a fine of up to 3,000 dinars, in addition to seizure of the weapons and authorization of their confiscation.

• **Explosives**

Act No. 63 of 1996 (15 July 1996) regulates this sector and lays down the conditions for the manufacture of explosives intended for civilian purposes and their exportation, importation, transport, storage, use and trading. It makes the manufacture, importation, exportation, transportation, storage, use and trading of explosives the prerogative of the State through the public bodies, organizations and establishments competent in the explosives sector and coming under the Ministry of the Interior or under its supervision. The State may authorize legal or natural persons to carry out all or part of these operations in accordance with the conditions, procedures and arrangements provided for in the above-mentioned Act.

The production, transport and use of explosives in Tunisia are the exclusive domain in our country of a single company, which operates under the supervision of the Ministry of the Interior by virtue of prior authorization. This company supplies the users of explosives for civilian purposes (drilling for oil or water, scientific research such as seismic studies, etc.), who, in turn, obtain prior authorization to carry out such activities, using means of transportation belonging to them that meet the legal safety conditions laid down by the Decision of the Minister of the Interior dated 16 October 2000 concerning regulation of the loading, transportation and unloading of explosives intended for civilian purposes, the specifications for the

means of transport used and the safety rules and requirements applicable from point of supply to point of use.

The competent offices of the Ministry of the Interior monitor and follow up all of these operations in accordance with the requirements of public security, safety and environmental protection.

In view of the sensitivity of this sector, its direct bearing on public security and the definite need to regulate it further and to prevent the use of these materials for purposes other than those intended, the legislature has laid down provisions penalizing any person who contravenes the provisions of this Act or its implementing regulations concerning the manufacture, assembly, transport, storage, trading, use or possession of explosives or the arranging of explosives deals, particularly title IV of the Act, which imposes a penalty of up to 15 years imprisonment and a fine of 15,000 dinars.

Subparagraph 2 (c) of resolution 1373 (2001):

Please provide a detailed outline of the provisions of sections 305 and 313 of the Criminal Code that deal with prohibition of asylum to the perpetrators of terrorist acts.

Section 313 of the Code of Criminal Procedure lays down that crimes categorized as terrorism shall not be deemed political and that political asylum shall not be granted in such cases, extradition thus being mandatory.

This section provides:

"Extradition shall also not be granted:

"1. If the serious or less serious offence is of a political character or if it is clear from the circumstances that the request for extradition is politically motivated. An attempt on the life of a head of State, a member of his family or a member of the Government shall not be deemed a political crime;

"The crimes referred to in section 52 bis of the Criminal Code shall not be deemed political, and political asylum shall not be granted in such cases.

"2. If the crime in respect of which extradition is requested consists of dereliction of a military duty."

Note. Section 305 of the Code of Criminal Procedure does not relate to asylum but to the competence of the Tunisian courts to consider serious and less serious offences committed abroad. The text is given in the answer to the question concerning subparagraph 3 (e).

Subparagraph 2 (d) of resolution 1373 (2001):

Please outline the provisions of the Criminal Code that prohibit the use of the territory of Tunisia in connection with the commission of terrorist acts outside Tunisia.

2. What legal provisions criminalize acts of terrorism in another country?

1. With regard to the provisions of the Criminal Code that prohibit the use of the territory of Tunisia in connection with the commission of terrorist acts outside Tunisia, please refer to the reply concerning subparagraph 2 (e) and section 61 of the

Criminal Code, mentioned above, concerning external attacks on the security of the State and section 131 of the Criminal Code, concerning criminal complicity.

Section 61 bis provides:

"The following shall be regarded as committing a crime against the external security of the State and shall be liable to the penalties laid down for them in section 62 hereof:

"1. Any Tunisian or alien who by any means attempts to impair the territorial integrity of Tunisia;

"2. Any Tunisian or alien who enters into relations with agents of a foreign State for the purpose of or resulting in the causing of damage to Tunisia militarily or diplomatically."

2. With regard to the provisions criminalizing acts of terrorism committed in another country, please refer to section 61 of the Criminal Code. Section 62 bis provides that "the penalties laid down in this chapter shall be imposed if the act is committed against a State with which Tunisia is linked by a treaty of alliance or other equivalent international instrument".

Subparagraph 2 (e) of resolution 1373 (2001):

What is the competence of the courts of Tunisia to deal with a criminal act committed outside Tunisia by a foreign national who is currently in Tunisia?

Section 305 of the Code of Criminal procedure provides:

"Any Tunisian citizen who commits outside the territory of the Republic a serious or less offence that is punishable under Tunisian law may be prosecuted and brought to trial by the Tunisian courts, save where the law of the country in which the offence was committed does not penalize it or where the person charged can prove that a final judgement was handed down in the case abroad and that, if he was sentenced, that he has already served the sentence or that the statute of limitations applies a pardon has been granted.

"The provisions of the preceding paragraph shall apply to offenders who do not acquire Tunisian citizenship until after the date of the commission of the acts ascribed to them.

"Any Tunisian who commits any one of the crimes mentioned in section 52 bis of the Criminal Code abroad may be prosecuted and brought to trial even if the aforementioned crimes are not penalized by the legislation of the State in which they were committed."

Section 307 provides:

"Any alien who outside the territory of the Republic, whether as a principal offender or an accomplice, commits a serious or less serious offence that is prejudicial to State security, forges the State seal or counterfeits the national currency may be prosecuted and brought to trial in accordance with the provisions of Tunisian law if he is apprehended in Tunisia or the Government obtains his extradition."

Section 307 bis provides:

"Any person who commits a serious or less serious offence outside Tunisian territory, whether as a principal or an accomplice, may be prosecuted and brought to trial by the Tunisian courts if the injured party holds Tunisian nationality. No prosecution may be instituted except at the request of the Office of the Public Prosecutor on the basis of a complaint by the injured party or is asked. No prosecution may take place if the person charged can prove that a final ruling was handed down against him and that, if he was sentenced, he has served the sentence handed down against him, the statute of limitations applies or a pardon has been granted."

Subparagraph 2 (f) of resolution 1373 (2001):

Please provide a list of the countries with which Tunisia has concluded bilateral treaties in criminal matters.

Bilateral agreements on judicial cooperation in criminal matters concluded between Tunisia and foreign countries

Contracting State	*Subject of agreement*	*Date and place of signature*
Libyan Arab Jamahiriya	Agreement on notifications, letters rogatory, enforcement of judgements and extradition of offenders	Tripoli, 14 June 1961
Algeria	Agreement on mutual assistance and judicial cooperation	Algiers, 26 July 1963
Lebanon	Agreement on judicial cooperation, enforcement of judgements and extradition of offenders	Beirut, 28 March 1964
Morocco	Agreement on judicial cooperation, enforcement of judgements and extradition of offenders	Tunis, 9 December 1964
Jordan	Agreement on judicial cooperation, enforcement of judgements and extradition of offenders	Amman, 6 March 1965
Jordan	Addenda 1 and 2 to the Agreement on judicial cooperation, concerning commercial arbitration and extradition of offenders	Amman, 18 December 1996
Mauritania	Agreement on judicial cooperation	Nouakchott, 17 November 1965
United Arab Emirates	Agreement on judicial cooperation in civil and criminal matters	Tunis, 7 February 1975
Egypt	Agreement on legal and judicial cooperation in civil and commercial matters, matters of personal status and criminal matters	Tunis, 9 January 1976

Contracting State	*Subject of agreement*	*Date and place of signature*
Kuwait	Agreement on legal and judicial cooperation in civil and criminal matters and matters of personal status	Tunis, 13 June 1977
Kuwait	Addendum 1 amending the Agreement on legal and judicial cooperation in civil and criminal matters and matters of personal status	Kuwait, 9 April 1995
Syrian Arab Republic	Agreement on judicial cooperation, notifications, letters rogatory and enforcement of judgements	Tunis, 26 November 1980
Qatar	Agreement on legal and judicial cooperation in civil and criminal matters	Tunis, 6 January 1997
Yemen	Agreement on judicial cooperation in civil, commercial and criminal matters and matters of personal status	Sana`a, 8 March 1998
Germany	Agreement on extradition of offenders and judicial cooperation in criminal matters	Bonn, 19 July 1966
Italy	Agreement on judicial cooperation on civil, commercial and criminal matters, recognition and enforcement of judgements and arbitral awards and extradition of offenders	Rome, 15 November 1967
Romania	Agreement on judicial cooperation in civil and criminal maters	Tunis, 6 March 1971
France	Agreement on judicial cooperation in criminal matters and extradition of offenders	Tunis, 28 June 1972
Bulgaria	Agreement on judicial cooperation in civil and criminal matters	Tunis, 16 October 1975
Czechoslovakia	Agreement on judicial cooperation in civil and criminal matters, recognition and enforcement of judicial sentences and extradition of offenders	Tunis, 12 April 1979

Contracting State	*Subject of agreement*	*Date and place of signature*
Turkey	Agreement on judicial cooperation in criminal matters and extradition of offenders	Ankara, 7 May 1982
Hungary	Agreement on judicial cooperation in civil and criminal matters, recognition and enforcement of legal judgements and extradition of offenders	Budapest, 6 December 1982
Poland	Agreement on judicial cooperation in civil and criminal matters	Varsovia, 22 March 1985
Belgium	Agreement on judicial cooperation in criminal matters and extradition of offenders	Tunis, 27 April 1989
Greece	Agreement on judicial cooperation in criminal matters	Athens, 6 July 1994
Portugal	Agreement on judicial cooperation in criminal matters	Tunis, 11 May 1998
Portugal	Agreement on judicial cooperation in the extradition of offenders	Tunis, 11 May 1998
Spain	Agreement on judicial cooperation in criminal matters	Tunis, 24 September 2001
Senegal	Agreement on judicial cooperation, enforcement of judgements and extradition of offenders	Dakar, 13 April 1964
Mali	Agreement on judicial cooperation	Bamako, 29 November 1965
Côte d'Ivoire	Agreement on judicial cooperation	Tunis, 8 July 1975
China	Agreement on judicial cooperation in criminal matters	Beijing, 13 November 1999
India	Agreement on judicial cooperation in the extradition of offenders	Tunis, 4 April 2000

Subparagraph 2 (g):

1. Please explain the measures taken to prevent the movement of terrorists and terrorist groups across national boundaries.

2. Please explain the procedures for preventing the forging of identity papers and travel documents.

Within the framework of the security system used to protect transit points, airports, seaports and border points, the competent Tunisian services use an

advanced computer to store data and to detect persons involved in acts of terrorism, apprehend them and turn them over to the competent judicial authorities. The competent unit monitor the land and sea borders in order to prevent infiltration by terrorist elements.

1. Measures taken to prevent the movement of terrorists and terrorist groups across national boundaries

In the aftermath of the events of 11 September 2001, a number of measures have been adopted, including in particular the following:

With regard to Tunisian elements whose membership in terrorist organizations, including al-Qa`idah, is proven, a border measure was adopted in respect of 77 Tunisian elements requiring that they be apprehended and turned over to the authorities and special, urgent inspection warrants were issued through letters rogatory and arraignment papers.

With regard to the 212 elements included in the list adopted by the United Nations Sanctions Committee on Afghanistan, dated 14 March 2002, a border measure was adopted requiring that all the above-mentioned elements be prevented from entering into or travelling through Tunisian territories.

Border measures have been promulgated requiring that aliens suspected of belonging to any terrorist organization, including al-Qa`idah be prevented from entering our country. This is being achieved through cooperation with the offices of Interpol throughout the world and also the liaison offices of the General Secretariat of the Council of Arab Ministers of the Interior.

2. Preventive measures against the forging of travel documents and identity papers

Our country has also taken a whole set of measures (technical, legislative, international cooperation) to combat the phenomenon of the forgery of travel documents and to deter would-be perpetrators of this type of offence. We may mention the following.

• At the legislative level

At the general legislative level, sections 193, 194 and 195 of the Criminal Code deal with the crime of forgery of travel documents and the penalties laid down for those committing them. At the level of special legislation, Act No. 40 of 1975 (14 May 1975), in particular section 16 thereof, deals with crimes relating to passports and travel documents.

• At the technical level

The competent security organs have strengthened the security specifications for Tunisian passports by laying down a model for them that is computer-readable in order to guarantee the greatest possible amount of top security information. Border security units are currently being provided with advanced equipment so as to put this into practice in the near future.

Border security units are being strengthened by additional human resources, after such officials have been given basic training in their area of competence. They also receive throughout their working life ongoing training and briefing in the latest legislative and technical developments, in order to enrich their store of knowledge

and ensure greater efficiency and professionalism in their performances of administrative and field work.

With regard to measures to prevent the forgery of identity papers, our country has hastened to adopt the necessary technical measures to enhance the security of such papers, which may be used for criminal ends, and has marshalled considerable human and material resources for this purpose. This effort has culminated in the issuance of the current identity card, which has a high degree of invulnerability, which makes it extremely difficult to forge or counterfeit.

- **At the international cooperation level**

Our country has unceasingly striven to strengthen relations of cooperation with security elements, especially insofar as concerns the mutual exchange of information, as well as information concerning lost passports, particularly unused ones, with details of the serial numbers. In this context, the border services exchange models of passports with their counterparts in the various countries in order that they may be circulated to all border posts (land, sea and air), so that security personnel working in this field may be acquainted with the official specifications of those passports and be able to detect any forgery immediately.

Paragraph 3 of resolution 1373 (2001)

Subparagraph 3 (c) of resolution 1373 (2001):

Is there any provision in the bilateral treaties concluded by Tunisia for the possible extradition of perpetrators of the crimes covered by international treaties relating to counter-terrorism?

The international treaties ratified by law are implemented without there being any need for reference to them in bilateral agreements. As long as the crimes categorized as terrorism in Tunisian law and in international agreements are not exempted from extradition, bilateral agreements included by Tunisia on extradition of offender apply to such crimes.

Subparagraph 3 (d) of resolution 1373 (2001):

1. Please report on the progress made by Tunisia in becoming a party to the international instruments on counter-terrorism to which it is not yet a party.

2. Please report on the progress made by Tunisia in enacting legislation, and making other arrangements, to implement the international instruments on counter-terrorism to which it is a party.

Progress made by Tunisia in becoming a party to international instruments on counter-terrorism

Tunisia is a party to 11 international agreements on counter-terrorism and is also a party to all the relevant regional agreements that concern it. It is currently in the process of completing the necessary procedures for ratification of the International Convention for the Suppression of the Financing of Terrorism, having already signed it. The following is a list of the measures taken by Tunisia to become a party to the international and regional instruments on counter-terrorism:

List of measures taken by Tunisia to become a party to international and regional instruments on counter-terrorism

• International instruments

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 24 December 1973). Signed on 15 May 1974 and ratified on 4 November 1976.
- International Convention against the Taking of Hostages (New York, 18 December 1979). Accession on 3 March 1997.
- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963). Accession on 24 October 1974.
- Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970). Accession on 1 September 1981.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971). Accession on 1 September 1981.
- Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980). Instruments of ratification deposited on 18 June 1993.
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988). Accession on 17 January 1994.
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988). Accession on 15 December 1997.
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 10 March 1998). Accession on 15 December 1997.
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991). Accession on 1 August 1994.
- International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997). Accession on 14 February 2002.
- International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999). Signed by Tunisia on 2 November 2001.

• Regional instruments

- Arab Convention on the Suppression of Terrorism (Cairo, 22 April 2002). Ratified by Tunisia on 15 February 1999.
- Organization of African Unity Convention on the Prevention and Combating of Terrorism (Algiers, 14 July 1999). Ratified by Tunisia on 1 August 2001.
- Convention of the Organization of the Islamic Conference on Combating International Terrorism. Ratified by Tunisia on 1 April 2002.

Paragraph 4 of resolution 1373 (2001):

Has Tunisia addressed the relationship between terrorism and transnational organized crime?

Tunisia believes that there is a firm connection between transnational organized crime and terrorist crime and that this calls for uniting efforts to counter them equally. In addition to the fact that terrorist crimes have the characteristics of non-national crimes, it is now certain that this last mentioned type of crime is usually committed for the purpose of facilitating the commission of terrorist crimes, particularly as they provide the necessary funds through networks involved in illegal drug trafficking, arms smuggling, the trafficking of women, money-laundering and other forms of organized crime.

Accordingly, Tunisia was one of the first countries to sign the United Nations Convention against Transnational Organized Crime, which was recently ratified by Act No. 63 of 2002 (23 July 2002).

In addition to the above-mentioned numerous and varied measures taken for the prevention and combating of terrorism, Tunisia reaffirms once again the need to further strengthen international cooperation in this area through compliance with requests for the extradition of terrorists and the promotion of judicial and security cooperation with respect to them.

It should be mentioned in this regard that since the 1990s Tunisia has approached a number of States, European ones in particular, with requests for the extradition of Tunisian individuals involved in terrorist cases. These requests went unanswered, and it has become clear, especially since the events of 11 September 2001, that a number of those whose extradition was sought have been involved in acts of the same nature and that others have been connected with the al-Qa'idah organization and the Taliban group.

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Letter dated 9 September 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 14 August 2002 (S/2002/955).

The Counter-Terrorism Committee has received the attached supplementary report from the Federal Republic of Yugoslavia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 4 September 2002 from the Permanent Representative of Yugoslavia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Further to your letter of 28 May 2002, I have the honour to forward, enclosed herewith, the information supplementing the report of the Federal Republic of Yugoslavia to the Counter-Terrorism Committee on the implementation of resolution 1373 (2001) (see enclosure). I should be grateful if you would have the text of the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Dejan **Sahovic**
Ambassador
Permanent Representative

Enclosure

Information supplementing the report of the Federal Republic of Yugoslavia to the Counter-Terrorism Committee on the implementation of resolution 1373 (2001)*

Sub-paragraph 1 (a)

Could Yugoslavia provide an outline of the proposals made by the interdepartmental Working Group to amend the laws of Yugoslavia to bring them in line with the UNSC resolution 1373 and other relevant international conventions.

Legislation to provide compliance with UNSC resolution 1373 and other relevant international documents regulating this matter is still under preparation and will be forwarded to the UNSC Counter-Terrorism Committee as soon as it is ready.

Sub-paragraph 1 (b)

Since Yugoslavia signed the International Convention for the Suppression of the Financing of Terrorism, what are Yugoslavia's intentions for incorporating the relevant offences from the Convention into the various laws of Yugoslavia?

The Bill on the Amendment of the Criminal Law of the Federal Republic of Yugoslavia, submitted to the Federal Assembly for enactment, provides for the criminal offense of financing of terrorism. Its incorporation is proposed in order to provide compliance of the Yugoslav criminal legislation with this Convention, signed and ratified in the meantime. According to the Bill, this offense is committed by a person who makes available or collects funds intended for the financing of terrorism and is punishable with one to ten years in prison.

The provision of the future Article 155g "financing of terrorism", according to the Bill on the Amendment of the Criminal Law of the FR of Yugoslavia reads:

"Financing of terrorism
Article 155g

1) Whoever makes available or collects funds intended for the financing of the commission of criminal acts referred to in Articles 155a, 155b or 155v shall be punished with one to ten years in prison.

2) Funds referred to in paragraph 1 of this Article shall be impounded."

Note: Article 155a refers to international terrorism, Article 155b to threats to persons under international protection, and Article 155v to taking of hostages.

Sub-paragraph 1 (c)

Does Yugoslavia intend to amend its law to enable the freezing of funds that are kept in Yugoslavia by persons (including, in particular, natural persons, given the current limitation of the operation of Article 210 of the Law on Criminal Procedure to legal persons) and entities outside Yugoslavia who are connected with terrorist activities outside Yugoslavia?

The FR of Yugoslavia will in the foreseeable future enact laws that will incorporate relevant incriminations enabling the punishment of the above mentioned offenses.

What vigilance and reporting obligations apply to financial intermediaries (including those outside the main financial sector, such as lawyers) with a view, in particular, to the prevention of economic and financial transactions with terrorist or other criminal aims (as distinct from identifying the proceeds of illicit activity)? What are the penalties for breach of those obligations and have any penalties already been handed down?

* The annexes are on file with the Secretariat and are available for consultation.

The Federal Commission for the Prevention of Money Laundering has been set up in order to enforce the Law on Money Laundering (*Official Gazette of the FRY* No. 53/2001) which became applicable on 1 July 2002. A Department for Combating the Financing of Terrorism has been envisaged within its scope. The Regulation on the Internal Organization and Job Classification in the mentioned Commission provides for eight jobs for employees who would engage in analytical and study work as well as technical and operative work referring to transactions connected with the financing of terrorism. The task of the Department is to assess whether specific financial transactions give ground to the suspicion that they involve money laundering for the financing of terrorism, so that appropriate measures can be undertaken against the persons engaging in such transactions.

Sub-paragraph 1 (d)

Please explain how the new Law on Criminal Procedure is expected to achieve the specific objective of this sub-paragraph. Please provide an outline of the relevant provisions and a progress report on its enactment and implementation.

The new Law on Criminal Procedure which came into force in March 2002, introduces a new provision in Article 234 which authorizes the investigating judge, if there is a reason to believe that a criminal act punishable with ten or more years in prison has been committed, to order, at a request of the State Prosecutor, a banking, financial or other organization to provide information about business or personal accounts. The new provision is expected to facilitate the detection of the criminal acts of financing of terrorism.

In December 2001 the Federal Government requested from the Federal Ministry of Finance and the Federal Ministry of Justice, as well as from the other relevant Departments, to investigate the possibility of drafting a federal law that would comprehensively regulate the undertaking of measures against organized crime and international terrorism, particularly in the financial area.

What preventive controls and surveillance measures exist to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations?

Please indicate the measures and instruments available to regulate alternative funds transfer arrangements, including the system known as Hawala.

The Law on Donations and Humanitarian Aid (*Official Gazette of the FRY*, Nos. 53/2001 and 61/2001) regulates the procedure relating to the receipt of donations and humanitarian aid from abroad, benefits relating to donations and aid granted to their recipients, as well as penalties in case of misrepresentation of facts for the purpose of acquiring benefits, misuse of foreign currency received through donations and humanitarian aid, as well as in the case of hampering the inspection of goods, business books and other documents relating to the received donations and humanitarian aid (that could be used, inter alia, for the financing of terrorism).

Sub-paragraph 2 (a)

Please outline the legal provisions that regulate the manufacture, sale, possession, transport and storage of weapons in Yugoslavia.

The list of regulations referring to the manufacture of and trade in armament and military equipment is provided in the Enclosure 1.

Please outline the legal provisions and procedures that regulate international trade in weapons and explosives.

Pursuant to the provisions of the Law on Transport of Hazardous Substances (*Official Gazette of the SFRY*, Nos. 27/90 and 45/90), the Federal Ministry of the Interior is in charge of issuing permissions for the transport of explosive substances across the state border or within the territory of the FR of Yugoslavia (import, export, transit), which contain the data on the sender, manufacturer, carrier and recipient of goods, as well as instructions about compulsory observance of special security measures, including a defined route of transport with police escort.

Pursuant to Article 27 of the Law on the Manufacture of and Trade in Armament and Military Equipment (*Official Gazette of the FRY*, No. 41/96) and Article 4 of the Regulation on the Transport of Armament and Military Equipment (*Official Gazette of the FRY*, No. 54/97), the Federal Ministry of the Interior is in charge of issuing permission

for the transport of armament and military equipment across the territory of the FR of Yugoslavia, on the basis of a previously issued permission of the Federal Ministry of Defense for the trade in armament and military equipment.

Permission for the transport of weapons and ammunition across the state border and for the transit via the territory of the FR of Yugoslavia is issued by the Federal Ministry of the Interior on the basis of a previously procured opinion of the Federal Ministry of Foreign Affairs and the Federal Ministry of Defense, as regulated by Article 30 of the Law on Border Crossing and Movement in the Border Zone (*Official Gazette of the SFRY*, No. 30/83).

In addition, import and export of explosives, arms and ammunition that are not intended for the use by armed forces, i.e. that are not classified as armament and military equipment, is carried out on the basis of permission issued by the Federal Ministry of Foreign Economic Relations, which specifies all participants in the trade, pursuant to the Decision of the Interdepartmental Commission for Issuing Permissions for Export and Import of Sports and Hunting Arms and Ammunition and Production Supplies for the Manufacture Thereof, in compliance with the provisions of the Law on Foreign Trade.

Special security measures are applied in all the mentioned cases of international trade of arms and explosives.

The Ministry of the Interior of the Republic of Serbia, in accordance with its scope of work defined by law, carries out and supervises the proper implementation of laws and bylaws, including regulations significant for effective combating of terrorist activities in the field of manufacture of and trade in arms, ammunition and explosives. In addition, the Ministry initiates amendments to the present and enactment of the new laws and bylaws. To upgrade the legislative and institutional framework for combating terrorism, the Ministry initiated the enactment of a special Counter-Terrorism Law, which will draw on the experiences of other European and overseas countries and be in compliance with the guidelines and objectives of UNSC resolution 1373.

Enclosure 2 lists the Republic laws and bylaws which regulate the manufacture of and trade in arms, ammunition, explosives, flammable liquids and gases.

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Yugoslavia, including, in particular:

- **the carrying out, within or from Yugoslavia, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and**
- **deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.**

Legislative measures preventing groups of persons from recruiting, collecting or soliciting various forms of support to terrorist activities are regulated by the Criminal Law of the FR of Yugoslavia as follows:

- terrorist and sabotage activities – by Articles 125, 126 and 127;
- sending and transferring to the territory of the FRY of armed groups, arms and ammunition – by Article 132;
- activities aimed at violation of the territorial sovereignty – by Article 135;
- association for the purpose of hostile activity – by Article 136;
- preparation and commission of the gravest forms of criminal acts – by Articles 138 and 139;
- abetting the perpetrator after the committed criminal act – by Article 137;
- international terrorism – by Article 155a;
- threats to persons under international protection – by Article 155b;
- taking of hostages – by Article 155v.

Practice has confirmed that the routes of illegal trafficking in narcotic drugs, white slavery, arms and other lethal means, as well as the illegal migrations toward Europe lead via the territory of the FRY.

The perpetrators of such criminal activities are potential perpetrators of terrorist activities.

In its general commitment for the participation in the combat against all forms of terrorism, the FRY is only continuing its ongoing activities in combating terrorist activities in its own territory which indirectly affect these activities in Europe and the world.

By what means is Yugoslavia able to control the establishment, and operations, in its territory of paramilitary groups that have the potential to engage in terrorist activities?

According to the valid regulations, any form of paramilitary organization and operation in the territory of the FRY is prohibited. The official state security forces in the FRY are the Ministry of the Interior and the Yugoslav Army. In view of the risk of possible establishment of paramilitary and/or terrorist groups and organizations, Ministries of the Interior of the Republic of Serbia and Republic of Montenegro, within their legitimate powers and competencies, have stepped up their activities referring to the control of the founding and operation of paramilitary groups which have the potential to engage in terrorist activities. In the aim of early prevention of paramilitary organizing and action, competent ministry departments continuously monitor the activities of the potential risk groups, while all available information are analytically processed to serve as a basis for planning and guidelines for the activities of the ministries.

Taking into account the international experiences concerning connections between terrorism and organized crime, the Ministry of the Interior of the Republic of Serbia, within the new organizational unit – Office for Combating Organized Crime, continuously monitors the activity of criminal organizations in order to detect all forms of connections with terrorist activities in or outside the country. Activities are continuously under way to detect and close the channels used for organized smuggling of excise goods, drugs, arms and white slaves, as the most profitable sources of financing of terrorist activities. The Ministry devotes particular attention to the detection of possible links between organized crime and action of terrorist groups, which can conceal their activities under the name of various humanitarian, religious, cultural organizations or commercial representative offices in our country. Detailed checks of the activity of these organizations, their membership and sources of financing are conducted, with special focus on the detection of possible connection with the terrorist organization Al Qaeda. An additional threat to the security of the FRY and broader region is the connection between terrorism in Kosovo and Metohija and in Southern Serbia and organized crime in the trade in narcotics, explosives, arms, ammunition and white slaves, as shown by the results of activities undertaken by the Ministry. This is a very strong link with international character, because training, procurement of arms and equipment, as well as terrorist activities carried out in the territory of Kosovo and Metohija are largely financed by the income tax levied on all employed Albanians in Western Europe, as well as from the proceeds from drug trafficking organized by the Albanian mafia, which is among the best organized mafias in the world. In this context, it should be stressed that the Assembly of the Republic of Serbia adopted the Law on the Organization of Competencies of Government Agencies in Combating Organized Crime and The Law on the Security and Information Agency (*Official Gazette of the Republic of Serbia*, No. 42/2002).

Sub-paragraph 2 (b)

Please describe the mechanisms and procedures available to provide early warning to states on terrorists and terrorist acts.

Relevant data are exchanged with other countries and organizations through the Central National INTERPOL Office, which operates within the Criminal Police Bureau of the Federal Ministry of the Interior of the FRY. In this way, on the basis of established rules of procedure, other States can get early warning on the risk of terrorists and their activities. In addition, these information can be circulated to other members of international community through adequate diplomatic channels.

The reply to sub-paragraph 2 (e) states that Yugoslav legislation does not provide for the punishment of terrorist groups. In this context, please clarify whether the definition of "criminal association" in Yugoslav criminal legislation specifically includes terrorist groups.

As we have mentioned in our previous report, establishment of terrorist groups is not sanctioned in the Yugoslav legislation as a criminal act in itself. However, general provisions on criminal liability provide for the punishment of

organizers of criminal association (Article 26 of the Criminal Law of the FRY). More specifically, a person who, for the purpose of committing a criminal act, created or used an organization, gang, conspiracy, group or another association, shall be held responsible for all criminal acts ensuing from the criminal plan of these associations and shall be punished as though he/she himself/herself committed these acts, regardless of whether and in what capacity that person took part in the commission of some of these acts. Terrorist groups would unquestionably fall into criminal association.

However, if such criminal association (i.e. terrorist group) has not committed any criminal act, the organizer shall be held responsible pursuant to Article 254 of the Criminal Law of the FRY ("Association for the purpose of committing criminal acts covered by the Federal Law"). According to this provision, a person who organizes a group aimed at committing criminal acts covered by the Federal Law, punishable with five or more years in prison, shall be punished with three months to five years in prison, unless a longer prison term is provided for such an organization by the Federal Law.

Please provide a detailed outline of Article 125 of the Criminal Law (relating to anti-State terrorism) and of Articles 155a, 155b and 155c (relating to international terrorism).

The criminal act of terrorism referred to in Article 125 is a form of internal, anti-State terrorism, while criminal acts referred to in Articles 155a, 155b and 155v represent a form of international terrorism which comprises elements of foreign nature.

The act of commission of the criminal act of terrorism referred to in Article 125 of the Criminal Law of the FRY implies undertaking of an action that produces general risk, such as causing explosion or fire, as typical actions. The second form of an act of commission is undertaking of an act of violence. What further defines the act of commission is that both forms of an act of commission must be in close connection with the consequence, i.e. they must cause the feeling of insecurity among the citizens. The feeling of insecurity among the citizens is a subjective condition, manifested primarily as the feeling of fear and endangerment. In addition to the act of commission and consequence, necessary for the existence of this criminal act is that the act of commission has been undertaken with an intention to endanger constitutional order or security of the FRY. That subjective element gives this criminal act a political dimension and in this element it differs from other criminal acts that can also be committed by undertaking a generally risky action or violence.

This act is punishable with three to fifteen years in prison. If the act resulted in a death of one or more persons or caused threat to human life, or is accompanied with massive violence and extensive destruction, or resulted in threat to the security, economic or military power of the country, the perpetrator shall be punished with minimum ten years in prison, and if the perpetrator during the commission of the crime willfully killed one or more persons, he/she shall be punished with minimum ten up to forty years in prison. The same punishment is provided for the perpetrator who committed this act during the state of war of in case of imminent war threat.

As for international terrorism, the Yugoslav criminal legislation makes distinction between international terrorism in the narrower and international terrorism in the broader sense of the word. International terrorism in the narrower sense encompasses criminal acts specified in Articles 155a, 155b and 155v of the Criminal Law of the FRY.

Regulation of the criminal act of international terrorism (Article 155a of the Criminal Law of the FRY) is based on the European Convention on the Suppression of Terrorism of 1977, although at the time of its regulation Yugoslavia had not ratified this convention[1]. The incrimination in this article proceeds from the narrower definition of terrorism, i.e. requires the existence of an intention to harm a foreign State by its commission. This act has a basic and two graver forms. The act of commission of the basic form is alternatively set forth and encompasses a) abduction of a person or commission of another act of violence; b) causing explosion or fire; c) causing danger to human life or to property of high value. The basic form is punishable with minimum one (maximum fifteen) years in prison. Punishment stipulated for the qualified form referred to in paragraph 2, which exists when the act caused the death of one or more persons, is minimum five (maximum fifteen) years in prison, and for the qualified form referred to in paragraph 3, which exists when the perpetrator intentionally killed a person, the punishment is from ten to forty years in prison.

[1] The European Convention on the Suppression of Terrorism was ratified in November 2001 (*Official Gazette of the FRY*, No. 10/2001) and will become effective in relation to our country three months after the deposit of the ratification instruments.

The international legal basis for the criminal act of threat to persons under international protection referred to in Article 155b of the Criminal Law of the FRY is the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, ratified by Yugoslavia in 1976 (*Official Gazette of the SFRY – International Treaties*, No. 54/76). This act has a number of forms. The act of commission of the basic form is defined alternatively as: a) abduction or another act of violence against a person under international protection or b) attack on official premises, private residence or a vehicle of a person under international protection. This act is punishable with minimum one (maximum fifteen) years in prison. The punishment for the qualified form referred to in paragraph 2 of that article, which exists if the act caused the death of one or more persons, is minimum ten and maximum forty years in prison. A less serious form of this offense, stipulated in paragraph 4, implies a serious threat to commit an action referred to in paragraph 1 and is punishable with one to ten years in prison.

A special form of international terrorism understood in broader sense is taking of hostages, which is in our legislation incriminated in Article 155v of the Criminal Law of the FRY. The obligation to regulate this criminal offense arises from the International Convention against the Taking of Hostages, ratified by Yugoslavia in 1984 (*Official Gazette of the SFRY – International Treaties*, No. 9/84). The passive subject, i.e. object of the criminal action is the abducted person, i.e. hostage, while the protecting subject is a foreign state or international organization. The action of commission of this offense is defined cumulatively, i.e. it consists of two acts: abduction and threat. It is a qualified threat i.e. it faces the abducted person with a prospect of being killed, injured or held as hostage unless the requirements have not been fulfilled. This threat is directed more at the state or an international organization which is coerced into doing something, than at the abducted person. Punishment of minimum one year (maximum fifteen) in prison is provided for this form. For the qualified form referred to in paragraph 2, which exists when the perpetrator intentionally killed the abducted person, the punishment of ten to forty years in prison is provided.

Under certain conditions, the following can also be encompassed by the criminal acts referring to international terrorism in broader sense: hijacking of aircraft (Article 240 of the Criminal Law of the FRY), endangering the safety of air flight (Article 241), unauthorized acquisition and use of nuclear material (Article 247a) and endangering the safety of nuclear material (Article 247b). The basis for these incriminations is found in ratified United Nations Conventions: Convention on Offences and Certain Other Acts Committed On Board Aircraft of 14 March 1963 (*Official Gazette of the SFRY*, No. 47/70), Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970 (*Official Gazette of the SFRY*, No. 33/72), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971 (*Official Gazette of the SFRY*, No. 33/72) and Convention on the Physical Protection of Nuclear Materials, concluded in Vienna in 1979.

Sub-paragraph 2 (c)

Please outline the legal provisions that deal with the provision of asylum to aliens, in particular those that provide for the denial of safe haven to terrorists.

The issue of asylum is regulated by the following:

- The Law on the Movement and Residence of Foreigners, *Official Gazette of the SFRY* Nos. 58/80, 53/85, 30/89, 26/90, 53/91 and *Official Gazette of the FRY* Nos. 24/94, 28/96 (Articles 44 to 49);
- Regulation on the Issuance of Travel Documents and Visas to Foreigners and the Form of these Documents and Visas *Official Gazette of the SFRY*, No. 44/81 (Articles 46 to 48).

According to the provisions of the mentioned law, the right to asylum in the FRY is granted to an alien who is persecuted due to his/her pursuit of democratic views and movements, of social and national liberation, of human freedoms and rights or of the freedom of scientific and artistic creativity.

A foreigner seeking asylum may submit an application for the granting of the right to asylum in person or through the republic bodies in charge of issuing travel documents and visas to aliens, or through diplomatic and/or consular offices of the FR of Yugoslavia abroad. The application can also be taken in the form of a record. The competent body which received the foreigner's request for asylum shall verify the statements in the application and shall forward the application, together with its opinion, to the Federal Ministry of the Interior through republic Ministries of the Interior.

If the available data on the applicant suggest or reasonable suspicion appears in the course of procedure that he/she came with an intention of acting against the FRY, the competent security service shall be informed thereof.

Opinion of the Federal Ministry of Foreign Affairs and, in case of military personnel, of the Federal Ministry of Defense, shall be procured in the course of deciding on the application for the granting of asylum.

An alien who has been granted the right to asylum is provided with accommodation (use of adequate apartment or funds for the provision of living quarters), as well as funds for support and health protection. Resources for these purposes are provided from the federal budget. The Federal Secretariat of Labor, Health and Social Welfare is in charge of the regulation of the mentioned rights for foreigners who have been recognized the right to asylum. The federal minister of the interior is authorized to decide on the recognition and revoking of the right to asylum.

At the proposal of the Federal Ministry of the Interior and of the Federal Secretariat of Labor, Health and Social Welfare, the Federal Government decides on a case-by-case basis on the amount of funds necessary for the support of a foreigner who has been recognized the right to asylum, as well as on the scope of health protection, criteria and conditions for the use and manner of exercising the mentioned scope of protection.

An alien who has been recognized the right to asylum is also granted the right to permanent residence in the FRY.

If after the recognition of the right to asylum data become available due to which the right to asylum would be denied or if it transpires that the alien is acting against the FRY and/or that he/she engages in activities harmful for the country's international interests, procedure will be instituted to revoke the right to asylum.

The decision on the revoking of the right to asylum specifies the deadline by which the alien must leave the territory of the FRY. That deadline may not be shorter than 30 days nor longer than six months. The alien can lodge an appeal to the Federal Government against the decision denying and against the decision revoking the right to asylum. Administrative dispute shall not be conducted against the decision rendered in response to this appeal.

The Law on the Movement and Residence of Foreigners encompasses also the issue of asylum. However, in the context of adjustment to the EU standards, a Task Force has been set up in the Federal Ministry of the Interior which drew up the Draft Law on the Movement and Residence of Foreigners and the Draft Law on Asylum and forwarded them for further consideration.

The Draft Law on Asylum sets forth that asylum will be denied to a person who meets the requirements for the refugee status if it is established:

- that the person committed a crime against peace, a war crime or a crime against humanity in the sense of international law;
- that the person had committed a grave crime outside the territory of the FR of Yugoslavia before he/she was admitted to FRY as a refugee;
- that it is contrary to international interests of the FR of Yugoslavia, national security considerations and protection of public order.

Please clarify whether there are any provisions in existing laws which exclude from access to Yugoslavia persons of the kind mentioned in sub-paragraph 2 (c) of the Resolution who are not asylum seekers.

The Law on the Movement and Residence of Foreigners regulates also the system of issuing FRY visas.

According to the provisions of Article 25, paragraph 1, sub-paragraph 1 of the Law, visa shall not be issued, i.e. entry into the FRY shall be denied to an alien who has committed a crime against humanity and international law.

An alien registered in the records of the competent authority of the FRY as an international offender shall be denied entry into the FRY (Article 25, paragraph 1, sub-paragraph 5).

The prepared Draft Law on the Movement and Residence of Foreigners sets forth that entry into the FRY shall be denied to an alien:

- who is entered into the register of non grata aliens or in the register of internationally wanted persons kept by the competent authorities of the FRY;
- who is not a citizen of a foreign state whose travel document he/she possesses, unless such a travel document expressly states that he/she is entitled to return to the state that issued the travel document or the visa;
- if he/she provided false data about him/herself in the application;
- in other justified cases, particularly if there is reasonable doubt about the identity and/or purpose of application.

Having in view that the FR of Yugoslavia as a transit country is convenient for the migration of the citizens of countries with widespread illegal migration, the competent authorities are undertaking measures to protect external borders of the FRY.

Sub-paragraph 2(d)

Please describe the provisions of the criminal law of Yugoslavia that prohibit the use of Yugoslav territory for the commission of terrorist acts outside Yugoslavia?

The criminal legislation of the FR of Yugoslavia does not recognize the use of the territory of Yugoslavia for the commission of terrorist activities outside it as a separate criminal offense, but such perpetrators would certainly be prosecuted, depending on the concrete circumstances.

Thus, for example, according to Article 253 of the Criminal Law of the FRY "Conspiracy to commit a criminal act prescribed by the Federal Law", a person who conspires with another to commit a criminal act, punishable with five or more years in prison (and criminal acts of terrorism are covered by the Federal Law and such a punishment is prescribed for them), shall be punished with up to one year in prison. According to Article 254 of the Criminal Law of the FRY "Association for the purpose of committing criminal acts prescribed by the Federal Law", a person who organizes a group aimed at committing criminal acts prescribed by the Federal Law, shall be punished with three months to five years in prison, and a member of such a group with up to one year in prison.

Sub-paragraph 2 (e)

What penalties will apply in respect of the various offences under the relevant international conventions and protocols relating to terrorism by virtue of the amendments under consideration to bring Yugoslavian legislation into line with the Resolution.

Punishments applicable to the criminal acts of terrorism are quoted in the reply to sub-paragraphs 1 (b) and 2 (b).

What is the competence of the courts of Yugoslavia to deal with criminal acts of each of the following kinds:

- **an act committed outside Yugoslavia by a citizen or by a person who is habitually a resident in Yugoslavia (whether that person is currently present in Yugoslavia or not);**

When active personal principle is concerned, as one of the principles underlying the Yugoslav criminal legislation, legally relevant is only the Yugoslav citizenship of the perpetrator, and not the fact that the perpetrator has permanent residence in the territory of the FRY.

- **an act committed outside Yugoslavia by a foreign national who is currently in Yugoslavia?**

This issue is regulated by Article 107 of the Criminal Law of the FRY "Applicability of the Yugoslav criminal legislation to aliens who committed a criminal act abroad". According to paragraph 1 of this article, the Yugoslav criminal legislation applies to an alien who commits a criminal act against our country abroad or who commits a criminal act against a citizen of the FRY. Paragraph 2 of the same article sets forth the conditions under which the universal principle is applied. According to this provision, the Yugoslav legislation also applies to an alien who commits a criminal act abroad against a foreign country or a foreign national punishable under the Yugoslav legislation with five or more years in prison (it follows from the answers to the previous questions that criminal acts of terrorism fall into this category of criminal offenses). The conditions for the application of the universal principle is that the perpetrator is found in our territory, that he/she is not extradited to a foreign country and that the committed act is punishable according to the law of the country where it has been committed.

Sub-paragraph 2 (f)

Please outline the particular provisions of the Law on Criminal Procedure that deal with mutual assistance in criminal investigation and in criminal proceedings.

The international legal assistance in criminal matters is regulated by a separate chapter of the Law on Criminal Procedure. According to this Law, international treaties shall have priority in the granting of international legal assistance, and if an international treaty has not been concluded with a certain state or if an issue is not regulated by an international treaty, the international legal assistance in criminal matters shall be provided according to the provisions of that Law.

According to the Law on Criminal Procedure, legal assistance implies primarily legal assistance in the narrower sense (interviewing of the defendant, witnesses and experts, preliminary investigation, search of premises and persons, confiscation of objects, as well as submission of documents, written materials and other objects in connection with the criminal proceedings conducted in the requesting state), as well as special forms of legal assistance, also regulated by this Law, such as extradition, cession and assumption of criminal prosecution and execution of the court decisions in relation to criminal punishment. All the foregoing forms of legal assistance are carried out on the basis of reciprocity. When providing international legal assistance, the body in charge of communication on the Yugoslav part according to the Law is the Federal Ministry of Justice.

Provision of legal assistance in the narrower sense is not regulated in detail, and as for the mentioned special forms of legal assistance, their regulation can be outlined as follows:

Regarding the execution of the ruling of a foreign court in criminal proceedings, the Law sets forth that the domestic court will carry out the ruling of a foreign court in relation to the punishment if that is specified by an international treaty or on the basis of reciprocity and if the punishment is pronounced by a domestic court according to the criminal legislation of the FR of Yugoslavia. In addition, if a foreign national has been convicted by a domestic court or a person authorized by a treaty files a request that the convict serves the sentence in his home country, the court judging in the first degree will act pursuant to the international treaty or according to reciprocity.

If a criminal offense has been committed in the territory of the FR of Yugoslavia by a foreign national residing in a foreign country, criminal prosecution may be ceded to that state if the foreign state does not object. Cession is allowed only for criminal acts punishable with up to ten years in prison, as well as for criminal acts of endangerment of public traffic. If the injured party is a Yugoslav citizen, cession shall not be allowed if the injured party objects, unless it has been granted as a security for exercising of his/her property claim.

The legal assumptions for extradition are: 1) that the person whose extradition is requested is not a Yugoslav citizen; 2) that the act for which extradition is requested has not been committed in the territory of the FRY, against it or its citizen; 3) that the act for which extradition is requested is a criminal act according to both the Yugoslav law and the law of the country where it has been committed; 4) that the statute of limitations according to the Yugoslav law has not occurred with respect of criminal prosecution or the execution of punishment or that the act is not encompassed by amnesty; 5) that the alien whose extradition is requested has not been already convicted for the same crime by the domestic court or acquitted by the domestic court, unless conditions for retrial set forth by this Law apply, or that criminal proceedings have not been instituted in the FRY against the alien for the same crime committed against the FRY, and if it has been instituted for an act committed against a Yugoslav citizen, that security has been provided for the exercising of a legal property claim; 6) that the identity of the person has been established and 7) that there is sufficient evidence for a

reasonable suspicion that the alien whose extradition is requested has committed the said crime or that an effective court decision exists.

Please provide a list of countries with which Yugoslavia has concluded bilateral agreements on mutual assistance.

Yugoslavia has signed 34 bilateral agreements on mutual legal assistance with 25 countries. Bilateral agreements on legal assistance have been concluded with the following countries: Albania, Algeria, Austria, Belgium, Bulgaria, Czechoslovakia (applicable to both the Czech Republic and Slovakia), Denmark, France, Greece, The Netherlands, Croatia, Iraq, Italy, Cyprus, Germany, Poland, Romania, Hungary, Mongolia, Russian Federation (former USSR), United States of America, Spain, Switzerland, Turkey and United Kingdom.

Sub-paragraph 3 (c)

CTC would be grateful for a report on the progress of the work of the expert working group on terrorism mentioned in the report.

Due to the intensive work on the drawing up of the Constitutional Charter, which should regulate the relations between Serbia and Montenegro, the Expert Working Group, i.e. the Counter-Terrorism Council has been formally established by the decision of the Federal Government of the FRY on 1 August 2002. The federal minister of the interior has been appointed the chairman of this body, and the federal minister of defense the deputy chairman. In view of this fact, stepped up activities of the Council can be anticipated in the forthcoming period, of which the CTC will be kept posted.

The CTC would be grateful for a list of the multilateral and bilateral treaties and agreements relating to mutual assistance in criminal matters to which Yugoslavia is party.

The list of treaties and agreements is provided as the Enclosure 3.

Sub-paragraph 3 (d)

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Yugoslavia in:

- **becoming a party to the instruments to which it is not yet a party; and**

The Federal Assembly of the FR of Yugoslavia ratified the International Convention on the Suppression of the Financing of Terrorism on 1 July 2002, and on 2 July 2002 it ratified the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe, adopted on 8 November 1990.

In addition to the ratified European Convention on the Suppression of Terrorism, ratification of the International Convention for the Suppression of Terrorist Bombings is under way, while procedure has been initiated for the ratification of the Convention on the Marking of Plastic Explosives for the Purpose of Detection.

- **enacting legislation, and making other necessary arrangements, to implement the instruments to which it is a party.**

Ratification of these Conventions will be followed by the enactment of necessary laws and other arrangements for their implementation.

Sub-paragraph 3 (e)

The CTC would welcome a progress report on the enactment and implementation of the amendments of the Criminal Law mentioned in relation to this sub-paragraph.

The Draft Law on the Amendments to the Criminal Law of the FR of Yugoslavia is still in parliamentary procedure and its enactment is expected to follow soon.

Sub-paragraph 3 (f)

Is there provision similar to Article 12 of the Law on Citizenship to restrict the long-term residence in Yugoslavia of persons of the kind to whom that Article denies citizenship?

Pursuant to Article 12 of the Law on Yugoslav Citizenship (*Official Gazette of the FRY*, Nos. 33/96 and 9/01) and provisions of Articles 12a and 26 of the Law, the possibility for admission into Yugoslav citizenship of a foreigner married to a Yugoslav citizen who has been granted permanent residence in the FRY, or a person who has been discharged from the Yugoslav citizenship and who is staying in the Yugoslav territory for at least one year, is excluded if their behavior gives rise to the conclusion that they would not respect the legal order of the FR of Yugoslavia.

In addition, Article 48 of the Law sets forth that a citizen of one of the newly-emerged states in the territory of the former SFRY, who is staying in the territory of the FR of Yugoslavia as a refugee, expellee or a displaced person, or a citizen of the SFRY who does not have a citizenship of one of the newly-emerged states, will not be admitted into Yugoslav citizenship if the interests of security, defense or international position of the FR of Yugoslavia so require.

Other matters

Could Yugoslavia please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

The scope of work of the Ministry of the Interior (MUP) of the Republic of Serbia is defined in Article 3 of the Law on Ministries, according to which the Ministry of the Interior discharges the tasks of the government administration relating to the protection of the security of the Republic of Serbia and detection and prevention of activities aimed at undermining or overthrow of the constitutional order, protection of life, personal and property security of citizens; suppression and detection of criminal acts and detection and arrest of the perpetrators of criminal acts and their delivery to the competent authorities; guarding of certain persons and facilities; safety of road traffic; control of the border crossing; control of the movement and stay in the border zone; control of the movement and stay of foreigners; acquisition, possession and carrying of arms and ammunition; production of and trade in explosive substances, flammable liquids and gasses; fire protection; citizenship, personal ID number, identity cards, travel documents, domicile and residence of citizens; training; deciding in the second degree in administrative procedure, on the basis of the regulation on refugees, as well as other duties defined by law.

The main principles for internal organization and job classification in the Ministry of the Interior of the Republic of Serbia are defined by the Government of the Republic of Serbia. The internal organization and job classification in the Ministry of the Interior of the Republic of Serbia are regulated by a ruling issued by the minister of the interior, with the consent of the Government.

The organization of the Ministry of the Interior of the Republic of Serbia is defined by the Regulation on the Internal Organization of the MUP of the RS. It regulates the organizational units of the Ministry, their scope, organization of the headquarters and areas under their jurisdiction, manner of the management of organizational units and manner of programming, planning and execution of the tasks in the Ministry. According to this regulation, the work and management of the Ministry are organized according to the horizontal-vertical and territorial principles, through the Public Security Department and territorial organizational units – 33 Secretariats of the Interior (SUP), which encompass in their scope 126 Offices of the Interior (OUP) and 31 Police Stations (PS).

Within the scope of the Public Security Department at the MUP headquarters there are 13 organizational units (10 Bureaus, the Operational Center, Special Anti-Terrorist Unit and Gendarmery). The Bureaus at the Headquarters are: the Criminal Police Bureau, the Police Bureau, the Traffic Police Bureau, the Border Police Bureau for Aliens and Administrative Affairs (which encompasses 37 Border Police Stations – SPPs), the Fire Brigade, the Analytical Bureau, the Information Bureau, the Communications Bureau, the General Services Bureau and the Board and Lodging Bureau.

The following organizational units operate outside the scope of the Department: the Office of the Minister, the Office for Combating Organized Crime, the General Inspector for the Public Security Department, the General Inspector for the State Security Department, the Special Operations Unit (JSO), the Helicopter Unit, the Normative and Legal Affairs Office, the Security Institute, the College of the Interior and the Secondary School of the Interior.

Regular police force is the most numerous division of the Ministry of the Interior. Its scope of operation is defined by law and includes primarily the tasks referring to the safety of persons and property, maintaining public order and peace, safety of road traffic, border crossing control. The nature of these tasks defines their

respective titles: the General Police, the Criminal Police, the Traffic Police, the Border Police and the Fire Brigade.

Special police force

Special police force is organized into the following units: Special Anti-Terrorist Unit (SAJ), Gendarmery, Special Operations Unit (JSO) and Helicopter Unit.

Special Anti-Terrorist Unit

Performs tasks referring to the protection of the security of the Republic of Serbia and its citizens, particularly in the situations of hijacking of aircraft and other transport means, taking of hostages, barricading, action of sabotage-terrorist, outlaw and other dangerous groups or individuals and in other situations involving resistance with the use of firearms.

Gendermery

The basic maneuver unit of the Public Security Department, which plans, organizes and carries out the most complex security tasks in the cases such as incursions and organization of sabotage-terrorist and dangerous outlaw groups; rebellion in prisons; arrest of dangerous criminals; restoring public order and peace in case of its massive disruption; security at high-risk public gatherings; assistance in cases of general danger and elimination of consequences of natural disasters, as well as other duties and tasks within the scope of work of the Department.

Special operations unit (JSO)

Carries out tasks and duties referring to the suppression of terrorist and sabotage actions by organizations, groups or individuals in the country or abroad, performs rescuing functions by aiding citizens whose lives and/or property are endangered and carries out other tasks in cases when the interests of the country's security so require.

Helicopter unit

Discharges tasks referring to direct engagement and assistance in providing protection of the state and its citizens, and in particular detection and apprehension of terrorist, outlaw and other criminal groups or individuals, arrest of dangerous criminals, restoration of public order and peace in case of its massive disruption, traffic control, containment and extinguishing of fire, rescuing functions in case of endangered lives and property, and carries out other tasks in cases when the interests of the country's security so require.

The organizational chart of the Ministry of the Interior of the Republic of Serbia is provided in Enclosure 4.[2]

[2] In view of their competencies and scope of work, the Republic Ministries bear the greatest burden, duties and responsibilities in combating terrorism. Due to this, instead of the organizational chart of the Federal Ministry of the Interior, we presented as representative the organization of the Ministry of the Interior of the Republic of Serbia, which covers and is responsible for security on the greatest part of the FRY territory.